UNITED
NATIONS

CAT

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

Distr.
RESTRICTED*

CAT/C/41/D/257/2004
21 November 2008

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Forty-first session
(3 - 21 November 2008)

DECISION

Communication No. 257/2004

Submitted by:	Mr. Kostadin Nikolov Keremedchiev (not represented by counsel)
Alleged victim:	The complainant
State party:	Bulgaria
Date of complaint:	28 September 2004 (initial submission)
Date of the present decision:	11 November 2008

Subject matter: Torture/Ill-treatment during arrest

Substantive issues: Torture, cruel, inhuman or degrading treatment or punishment, failure to investigate

Articles of the Convention: 1, paragraph 1; 10; 11; 12; and 16.

[ANNEX]

* Made public by decision of the Committee against Torture.

ANNEX

DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Forty-first session

Concerning

Communication No. 257/2004

Submitted by:	Mr. Kostadin Nikolov Keremedchiev (not represented by counsel)
Alleged victim:	The complainant
State party:	Bulgaria
Date of complaint:	28 September 2004 (initial submission)

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 November 2008,

Having concluded its consideration of complaint No. 257/2004, submitted to the Committee against Torture by Mr. Kostadin Nikolov Keremedchiev under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1. The complainant is Mr. Kostadin Nikolov Keremedchiev, a Bulgarian national, born in 1973. He claims to be a victim of violations by Bulgaria of article 1, paragraph 1; article 10; article 11; article 12; and article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is unrepresented.

The facts as presented by the complainant

2.1 In the Winter of 2003, the complainant worked in the "Hizhata" restaurant, located on Snezhanka Peak, in the ski resort of Pamporovo, Bulgaria. On the evening of 3 February 2003, he went to a bar in Pamporovo with some friends. On the way home at around 6am the next morning, he decided to wait in the lobby of the Hotel "Murgavets", for the first chair lift at 8.00am to return to his residence at Snezhanka Peak. He fell asleep in the hotel lobby and was

woken up by someone kicking him. The individual, unknown to the complainant, tried to force him to leave the hotel. The complainant explained why he was waiting there and that he was only staying for another hour. Later, the same individual, accompanied by another man, again tried to make the complainant leave the lobby[1].

2.2 Shortly afterwards, two police officers arrived and shouted at the complainant, handcuffed him, and asked him to present his identity card. The police officers then took him out of the hotel; he was kicked "once or twice". The complainant asked the police officers to stop kicking him, but he was pushed and fell to the ground. He began calling for help, and was ordered to stop; as he did not obey, he was kicked and beaten with a truncheon, until he fainted. He woke up in a patrol car, with handcuffs and shackles on his legs. He was assaulted again in the car and one of the police officers allegedly attempted to strangle him at which point he again lost consciousness. He was taken out of the car and was threatened with being shot. He woke up in a cell of the Regional Police Directorate of Chepelare; he asked for a doctor who arrived two hours later. The complainant asked him to unchain him and to give him some medication, but he said that he was only there to do an alcohol test. The complainant was later charged with hooliganism, which he claims was initiated following a threat to the police officers who mistreated him that he would sue them for their actions.

2.3 On the morning of 5 February 2003, the complainant was released whereupon he underwent medical examinations with three different medical doctors, all of whom confirmed that he had certain injuries on his body and one of whom confirmed that these injuries could have been caused at the time, and in the manner described by the complainant.[2] According to the complainant, one of the doctors in question stated that he had been "advised" by the Regional Police Directorate not to provide a medical report for him. On 4 April 2003, the complainant complained about the assault to the Regional Military Prosecutor's Office in Plovdiv[3], which investigated his claim. On 23 September 2003, the Plovdiv Military Deputy-Prosecutor found

---

[1] From the documents submitted it transpires that the individuals in question were both hotel employees.

[2] Copies of medical reports are provided: 1. Report dated 5 February 2003, referring to the results of an ultrasound, "Kidneys – normal size; slight changes in the parenchyma zones and the calyxes showing contusion more on the right kidney. The rest parenchyma organs – without peculiarities. There are no free liquids into the abdomen"; 2. Report dated 5 February 2003, which states "Trauma of the iliac zone, concussion of the kidney to the right. Erizthrocytoria.";3. Medical-forensic report, dated 12 July 2003, following a medical-forensic assessment ordered by the investigation. The doctor made the following conclusion based on the two medical reports mentioned above as well as on his own examination. "Trauma of the right iliac zone; concussion of the kidney on the right; available blood in the urine; a blood on the skin of the left armpit, as well as the left and right thigh and along the back (right iliac zone), a worn out on the skin of the left cochlea; a worn out on the skin of both wrists, and a traumatic edema on the back of the fright palm. The above mentioned traumas were caused by either a hit, to close pressing against a hard blunt object; it is possible to be caused within the same time and in the same way, the witnesses declared in their evidence."

[3] In relation to this claim, the case file contains copies of "Minutes of an Examination of witness", during which two witnesses explained on 8 July 2003 what they had witnessed in the morning of 4 February 2003.

that although a "slight physical injury" had been caused to the complainant, the police officers concerned had acted lawfully. The criminal case was then closed. On 13 November 2003, the complainant appealed against this decision to the Military Court of Plovdiv, claiming that it was unfounded and beset by procedural irregularities[4]. On 24 November 2003, the Military Court confirmed the Prosecutor's decision. The complainant submits that he has exhausted domestic remedies, as due to a legislative change in 2003 it is no longer possible to appeal such rulings to the Supreme Court.

The complaint

3. The complainant claims that the treatment he received at the hands of the police, and for which the State party authorities failed to provide him with redress, amounted to violations of articles 1, paragraph 1; 10; 11; 12; and 16, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

State party's observations on admissibility

4.1 On 30 November 2004, the State party provided its observations and submitted that the complaint was inadmissible as: (a) the complainant has failed to exhaust domestic remedies; and (b) the actions of the police officers do not qualify as "torture", within the meaning of article 1, paragraph 1, of the Convention. It contended that according to article 359 of the Criminal Procedure Code (CPC), final judgements were subject to verification and that criminal cases can be re-opened on grounds listed in article 362 of the CPC. It acknowledged the complainant's argument that until 30 May 2003, the Criminal Procedure Code allowed appeals against rulings of the Regional Military Court before the Supreme Court, but that this possibility was eliminated by an amendment of the Criminal Code. By virtue of article 237, paragraph 4, Criminal Code, the decision of the Plovdiv Regional Military Court was final and not subject to appeal. However, it stated that after 30 May 2003 such rulings became subject to review within the terms of Chapter XVIII CPC (Re-opening of Criminal Cases). Accordingly, the complainant could have requested the Military Prosecutor or the Prosecutor-General to review the judgement, after which either one of them could have requested the Supreme Court to re-open the case. According to the State party, the complainant had failed to avail of this remedy and had thus failed to exhaust domestic remedies.

4.2 The State party submitted that the actions of the police officers against the complainant do not qualify as "torture" within the meaning of article 1 of the Convention. It submitted:

> (a) that the police officers did not act with the *intention* of inflicting severe pain or suffering on the complainant for any of the purposes defined in the first sentence of article 1, paragraph 1 of the Convention. According to the State party, the documents submitted by the complainant demonstrate that the officers acted in compliance with article 78, paragraph 1 (1) and (2), of the Law on the Ministry of Interior, which "authorises the use of physical force and other means for police officers if their duties cannot be exercised by

[4] The complainant states that the Martial Court in Plovdiv accepted as an established fact, without verification, that he was drunk at the time of the incident, and that he hit tables and armchairs in the lobby bar, and threw down ash-trays "thus disturbing the public order".

other means and in cases of resistance or refusal of an individual to comply with a lawful order."

(b) that the actions of the police officers fall under the definition of the second sentence of article 1, paragraph 1 of the Convention, according to which the pain or suffering endured by the complainant arose "only from, inherent in or incidental to lawful sanctions". For the State party, the material submitted by the complainant demonstrated that the police actions amounted to such lawful actions. Consequently, any pain or suffering that may have been caused to the complainant is not of the type defined in paragraph 1 of the Convention.

4.3 The State party observed that the complainant was found guilty of hooliganism (article 325, paragraph 2[5], of the CPC) and for damaging property (police car under article 216[6] of the CPC), by three consecutive instances. At first instance on 11 November 2003, upon appeal on 16 February 2004 and by the Supreme Court on 2 November 2004. In light of his behaviour, the State party concluded that "it is evident that the police officers had to apply lawful measures against the complainant in order to interrupt his hooliganism".

Complainant's comments

5. On 4 January 2005, the complainant contested the State party's argument that he had not exhausted domestic remedies. He provided a copy of his request for review under article 362 of the CPC to the Prosecutor General of 25 March 2004, as well as a copy of the reply of 26 May 2004 signed by the Prosecutor General of the Supreme Prosecution Office. The prosecutor had concluded that the failure to examine certain witnesses had not resulted in a prejudiced or incomplete investigation. The complainant further argued that it was clear from the Supreme Court judgement of 2 November 2004, which affirmed his conviction for hooliganism, that this judgment was final and not subject to appeal. He stated that he was considering the possibility of filing an application for violation of his right to a fair trial with the European Court of Human Rights (based on article 6 of the European Convention of Human Rights).

Decision of the Committee on Admissibility

6.1 The Committee examined the admissibility of the communication during its 36th session, in May 2006. It ascertained, as required under article 22, paragraph 5(a), of the Convention, that the same matter had not been and was not being considered under another procedure of international investigation or settlement. It noted that in April 2005, the complainant had submitted an application to the European Court of Human Rights, registered before the Court as Case No. 17720/05, and that in substance, this application related to the same facts (use of force by police officers against the complainant). The application was, however, still pending and had

[5] According to the State party, article 325 (2) reads as follows: "Where the act has occurred with resistance to a body of authority or a representative of the public, fulfilling their obligations of preserving the public order, or where by its content it has been distinguished for its extreme cynicism or arrogance, the punishment shall be deprivation of liberty for up to five years."

[6] According to the State party, article 216 (1) reads as follows: "A person who unlawfully destroys or damages movable or real property belonging to somebody else, shall be punished by deprivation of liberty for up to five years."

not been transmitted to the State party. In these circumstances, the Committee considered that the above application could not be seen as "being" or "having been" considered under another procedure of international investigation or settlement, within the meaning of article 22, paragraph 5 (a), of the Convention. Therefore, it was not precluded by this provision from examining the communication.

6.2 On the requirement of exhaustion of domestic remedies, the Committee noted that the State party had challenged the admissibility of the complaint on the grounds that all available and effective domestic remedies had not been exhausted. However, it also noted that the complainant responded that he had made a request for review to the Prosecutor-General who rejected his request, and he had provided proof of this request as well as the Prosecutor-General's decision. In these circumstances, and taking into account that no additional information was adduced by the State party to support its argument, the Committee concluded that it was not precluded by the requirements of article 22, paragraph 5 (b), of the Convention, from considering the communication.

6.3 The Committee noted the complainant's allegations that the police officials used disproportionate force against him and that he was unable to obtain redress within the State party. It also noted the State party's contention that the police officers in question had acted lawfully, within their competencies defined by the Law on the Ministry of Interior, and that their acts do not constitute "torture" within the meaning of article 1, paragraph 1, of the Convention. The Committee considered however, that this claim had been sufficiently substantiated, for purposes of admissibility. The Committee concluded that the communication was admissible and invited the State party to present its observations on the merits.

State party's observations on the merits

7.1 On 27 February 2008, the State party provided its submission on the merits. It disputes the facts as recounted by the complainant and submits that having fallen asleep on one of the tables in the lobby of the Murgavets hotel the complainant was woken up twice by hotel personnel and asked to leave. He refused to leave and became violent, hitting tables and chairs and throwing down ashtrays. For this reason, the police were called. Two police officers arrived and asked him to show his identity card. He refused and became violent uttering curses, using offensive language and violently resisting the police officer's attempts to remove him from the hotel. They had to use necessary force to restrain him in compliance with article 78, para. 1, sub-paragraphs 1 and 2, of the Law on the Ministry of Interior. The complainant was handcuffed led out to the hotel and ordered to get into the patrol car. As he again resisted violently, necessary force was used to put him in the car, whereupon he was taken to the police station. He continued to behave aggressively in the car. In light of his behaviour, the police drew up a statement of the incident, in accordance with the Decree on Combating Petty Hooliganism. The complainant refused to sign it and scribbled all over it. The police officers reported the case to the Regional Police Directorate of Chepelare from which they received instructions to transport the complainant to the same Directorate. While being driven from the police station to the Regional Police Directorate, the complainant again tried to resist violently, inter alia, breaking the windshield of the police car in the process, and had to be restrained.

7.2 The complainant was apprehended for 24 hours at the Regional Police Directorate of Chepelare, where he asked for a doctor and was examined by one prior to being taken to the detention facility. The examining doctor established that he was in a highly agitated state, smelled distinctly of alcohol, shouted and used offensive language. He refused the offer of the administration of a tranquilizing injection. As to his physical examination, the doctor confirmed that the complainant "did not have any marks of bodily harm on his face and head". On 5 February 2003 at about 12 noon, the complainant was released. He was later charged and found guilty of hooliganism by a judgement of the Chepelare District Court. The Court considered the medical reports produced by the complainant which, according to the State party, concluded that he had suffered a "slight physical injury".

7.3 On the merits, the State party reiterates its arguments provided on admissibility and maintains its position that it did not violate any of the complainant's rights. As to the claims of violations of articles 10 and 11, the State party submits that neither of these claims has been substantiated by the complainant. In any event, it provides detailed information on how it has implemented both articles, including the provision of information submitted to the Committee in the context of the consideration of its third periodic report to the Committee in 2004. The State party submits that it was in the context of systematic reviews of its interrogation rules, instructions, methods and practices etc. that it issued two documents in 2003, on the procedure to be followed by the police upon detaining an individual and another on the Code of Conduct of policemen. Similarly, the State party contests the claim under article 12, and sets out the sequence of appeals made by the complainant to demonstrate that its authorities did conduct a prompt and impartial investigation. As to article 16, the State party reiterates its arguments made in relation to the admissibility of the complaint with respect to article 1. It refers to its version of the facts, including the author's violent behaviour upon being asked to leave the hotel, his resistance to arrest and the damage he did to the police car. It argues that he was found guilty by three instances in the State party and reiterates that the officers in question acted lawfully within the meaning of article 78, paragraph 1, sub-paragraph 2, of the Law on the Ministry of Interior.

Complainant's comments

8. On 27 March 2008, the complainant commented on the State party's submission. He submits that he remained in handcuffs with chains on his legs from 6 am to 10 am and was subsequently detained for 30 hours in a "cage" while handcuffed. He argues that he could not have damaged the police car in which he was driven to prison, as he was handcuffed and had chains on his legs all the time. He submits that only the statements of the two police officers in question were taken on board by the domestic authorities and that even the forensic medical certificate was not taken seriously. Although the certificate was attested to by three doctors, and contains evidence of a large number of injuries, as well as bruising to his kidneys and blood in his urine, it was regarded by the court and is regarded by the State party as merely demonstrating a "slight physical injury".

Issues and proceedings before the Committee

Consideration of the merits

9.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

9.2 The Committee notes the claim that the complainant was subjected to torture, as defined by article 1, paragraph 1, and/or cruel, inhuman or degrading treatment or punishment, as defined by article 16, paragraph 1, of the Convention. It notes that the exact circumstances of the arrest and intensity of the force used against the complainant are disputed by the parties but that the medical reports were assessed by the domestic courts as demonstrating a "slight physical injury" to the complainant. It observes that, according to the Decision of 23 September 2003, the doctor who examined the complainant in prison immediately after his arrest testified to having found no bruising on the complainant's face, head or arms, which appears to be contradicted by the medical reports subsequently produced. The State party adopts the courts' interpretation of the medical reports that the injuries caused were slight and arose from the lawful use of necessary force, in accordance with article 78, paragraph 1, sub-paragraphs 1 and 2, of the Law on the Ministry of the Interior.

9.3 From a review of the medical reports themselves, the Committee observes that the complainant suffered multiple bruising on various external parts of his body, to the extent that the injuries inflicted caused bruising to his kidneys and blood in his urine. In addition, the forensic medical report, of 12 July 2003, ordered by the State party's authorities themselves for the purposes of the investigation, attests to the injuries described in the two earlier medical reports and gives the view that these injuries could have arisen at the time of and in the manner described by the complainant. It also observes that the medical reports themselves do not refer to a "slight physical injury" but that this is the domestic court's interpretation. While recognizing that pain and suffering may arise from a lawful arrest of an uncooperative and/or violent individual, the Committee considers that the use of force in such circumstances should be limited to what is necessary and proportionate. The State party argues that the force used was "necessary", and states that the complainant had to be handcuffed, however it does not describe the type of force used nor say whether and/or how it was proportionate, i.e how the intensity of the force used was necessary in the particular circumstances of the case. The Committee considers the complainant's injuries too great to correspond to the use of proportionate force by two police officers, particularly as it would appear that the complainant was unarmed. It cannot agree with the domestic courts' interpretation that the complainant suffered from a "slight physical injury", as a result of the force inflicted upon him. While noting, on the basis of the evidence provided, that the injuries inflicted do not appear to amount to "severe pain and suffering", within the meaning of article 1, paragraph 1, it does consider that the treatment of the complainant by the police officials amounts to acts of cruel, inhuman or degrading treatment or punishment within the terms of article 16 of the Convention.

9.4 As to the claim of a violation of article 12, while noting that the State party did conduct a prompt investigation into the incident in question, an investigation in itself is not sufficient to demonstrate the State party's conformity with its obligations under this provision if it can be

shown not to have been conducted impartially. In this regard, the Committee notes the claims, uncontested by the State party, that one of the doctors in question had been requested by the police authorities not to provide the complainant with a medical report and that the Prosecutor had failed to summon certain witnesses. It also notes that the Prosecutor's office arrived at the same interpretation of the medical reports as the domestic courts themselves, to the extent that the complainant had suffered from a "slight physical injury", an interpretation already contested by the Committee in its finding of a violation of article 16 above. For these reasons, the Committee considers that the State party has also violated article 12 of the Convention.

9.5 As to the claims of violations of articles 10 and 11, the Committee notes that the complainant has failed to provide any arguments or information to substantiate such claims and thus is not in a position to making any finding with respect to the rights protected therein.

10. The Committee, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose violations of articles 12, and 16, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

11. In pursuance of rule 111, paragraph 5, of its rules of procedure, the Committee urges the State party to provide an effective remedy to the complainant, including fair and adequate compensation for the suffering inflicted, in line with the Committee's General Comment No. 2, as well as medical rehabilitation, and to inform it within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.

[Adopted in English, French, Spanish and Russian, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]
