



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

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**Committee against Torture**

**Decision adopted by the Committee under article 22  
of the Convention, concerning communication  
No. 573/2013\***

<i>Communication submitted by:</i>	D.C. and D.E. (not represented by counsel)
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Georgia
<i>Date of complaint:</i>	1 July 2013 (initial submission)
<i>Date of present decision:</i>	12 May 2017
<i>Subject matter:</i>	Torture and ill-treatment upon arrest
<i>Procedural issues:</i>	Admissibility — manifestly unfounded; exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture; torture — prompt and impartial investigation; treatment of prisoners
<i>Articles of the Convention:</i>	1, 11, 12, 13, 16 and 22

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\* The following members of the Committee participated in the examination of the communication:  
Essadia Belmir, Alessio Bruni, Felice Gaer, Claude Heller Rouassant, Jens Modvig, Ana Racu,  
Sébastien Touzé and Kening Zhang.



1. The complainants are D.C., a national of Georgia born on 10 May 1955, and his son D.E., also a national of Georgia, born on 21 March 1980. The complainants claim to be victims of violations by Georgia of articles 1, 11, 12, 13 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Georgia made a declaration under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 30 June 2005. The complainants are not represented by counsel.

### **The facts as submitted by the complainants**

2.1 The first complainant is a medical doctor by profession and worked for a non-governmental organization. The second complainant lives on a pension that he receives from the State as a result of his incapacity which is due to diabetes.

2.2 On 10 October 2010, around 4.30 p.m., officers of the criminal police arrested the first complainant in the yard of the home of his son — the second complainant — and forced him to enter a vehicle. The arresting officers then threatened the first complainant and hit him with their fists on his body and head. The officers falsified the first complainant's arrest record to obscure the duration of time that he spent in their custody; they incorrectly recorded that he was first detained at 5.40 p.m. and was delivered to a police station at 9.10 p.m., and recorded that there were no visible injuries on his body.

2.3 The second complainant called the police in order to find out what had happened to his father, and police officers came to the second complainant's apartment. When he refused to let them enter, one of the police officers hit him over the head with the handle of his pistol. While he was partially stunned, the officer reached into the pocket of the second complainant's coat to take the keys to his apartment and planted four bullets from a Makarov pistol in his pocket. The officers entered the apartment, where they planted a cartridge with bullets and 20 ampoules of morphine. The second complainant was then also arrested; his arrest record states that he was delivered to the police station at 9.10 p.m. The wound he incurred from being hit by the arresting officer was noted in the arrest record as being the sole injury found on him at that time.

2.4 The authorities accused the complainants of kidnapping and illegal possession of ammunition and narcotics. They were interrogated for about eight hours, during which time they were kept handcuffed, beaten, kicked, strangled and threatened that they would be thrown out of the window. The second complainant was burned with a cigarette and subjected to attempted rape. The officers threatened to inflict further harm on them and to arrest other family members of the complainants if the complainants did not admit to committing the crimes. Police officers and officers from the Prosecutor's Office, in particular one with the initials T.A., participated in the torture.

2.5 After midnight on 11 October 2010, the complainants were transferred to a temporary detention facility where they were evaluated by the medic on duty. Medical certificates provided by the complainants indicate that the first complainant had numerous small abrasions around his neck and collarbone and bruises on his leg, and the second complainant had haemorrhages on his head, his eyebrow and jaw were swollen, and there were multiple abrasions around his neck and collarbone.

2.6 The second complainant also alleges that he was not allowed to have insulin injections for the entire period of detention in the police station and in the temporary detention facility, which resulted in aggravation of his condition.

2.7 On an unspecified date, the complainants were convicted for crimes under articles 181 (extortion), 144 (kidnapping), 260 (illicit preparation, production, purchase, keeping, shipment, transfer or sale of narcotics) and 236 (illicit purchase, keeping, carrying, production, shipment, transfer or sale of firearms, ammunitions, explosive materials or explosive devices) of the Criminal Code of Georgia. The first complainant was sentenced to 30 years of imprisonment and the second complainant was sentenced to 32 years of imprisonment. The convictions under article 181 were subsequently overturned by the Supreme Court, on appeal. The newly elected Parliament issued, on 28 December 2012, an amnesty law for various crimes, including those under articles 236 and 260, and the complainants' sentences were subsequently reduced to 9 years of imprisonment each.

2.8 In 2011 and 2012 the complainants wrote 43 complaints regarding the torture they had experienced, to different institutions; in 2013 they wrote another 58 complaints. They claim that they did not receive a response to the majority of those complaints. However, the complainants' case was taken up by the Ombudsman of Georgia, who forwarded it to the Prosecutor's Office of Georgia on 26 November 2011. The Prosecutor's Office of Georgia opened an investigation into their allegations, under article 333 of the Criminal Code (exceeding official powers).

2.9 The complainants allege that the State party has not undertaken an effective investigation into their complaints, since they were questioned only once, as witnesses. They state that they were not given the status of "victims" during the proceedings, that to their knowledge no further investigative actions have taken place, and that the investigation was not initiated under provisions of the Criminal Code concerning torture. They believe that the Prosecutor's Office of Georgia intends to close the investigation once the statute of limitations expires.

### **The complaint**

3. The complainants allege that they are victims of violations by the State party of articles 1, 11, 12, 13 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### **State party's observations on admissibility**

4.1 The State party confirms that the complainants were arrested by officers from the criminal police on 10 October 2010. The first complainant was arrested on charges of alleged kidnapping on the basis of a court decision of 10 October 2010, and the second complainant was arrested on the grounds of alleged illegal possession of ammunition. After their arrests, the complainants were taken to a police department where they were interrogated. After the interrogation, the complainants were accommodated at temporary detention facility No. 2 of Tbilisi. On 13 October 2010, Tbilisi City Court ordered the complainants to be detained on remand, and the complainants were placed in Tbilisi prison No. 8.

4.2 On 10 October 2010, upon placement in the temporary detention facility, the first complainant underwent a medical examination and a record was issued describing certain injuries identified on his body.<sup>1</sup> The first complainant asserted that he had sustained those injuries before his detention and hence had no claims against the law enforcement officials. After spending a year in detention, on 19 October 2011, the first complainant submitted a complaint to the Tbilisi Prosecutor's Office that he had been ill-treated during his arrest. An investigation was launched by the Tbilisi Prosecutor's Office on 12 November 2011. On 23 February 2012, in the presence of a lawyer and an interpreter, an investigator questioned the first complainant with a view to verifying his allegations. Investigators also questioned the officers who had participated in his arrest, and obtained the records of his medical examinations in the temporary detention facility and in Tbilisi prison No. 8. The State party noted that at the time of the examination on 13 October 2010, no traumatic injuries were identified on the first complainant's body. The investigator ordered a forensic medical examination, which started on 5 March 2012 and finished on 16 March 2012.<sup>2</sup> According to the final opinion of the experts, based on their examination of the medical records, the complainants had light injuries, however the experts were unable to establish when exactly these were sustained. The investigation also examined other (unspecified) materials.

4.3 On 11 October 2010, upon placement in the temporary detention facility, the second complainant was subjected to a medical examination and a medical record was issued describing certain injuries identified on his body.<sup>3</sup> He stated that police officers had physically assaulted him and that was reflected in the medical examination record. The relevant authorities ensured the immediate transfer of that record to the investigative body.

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<sup>1</sup> A copy of the medical record was provided.

<sup>2</sup> A copy of the forensic medical report was provided.

<sup>3</sup> A copy of the medical record was provided.

Upon receipt of the medical examination record, on 6 November 2010, an investigation was launched by the Investigation Unit of the Tbilisi Prosecutor's Office. On the same day, investigators questioned the police officers who had participated in the arrest of the second complainant. On 11 November 2010, an investigator questioned the second complainant about the allegations noted in his medical examination record. However, the second complainant stated that he had no complaints against the police officers and explained that his previous complaints were the result of his anger because of his arrest.<sup>4</sup> The investigative authorities obtained the second complainant's medical records from the temporary detention facility and Tbilisi prison No. 8. The State party noted that no injuries were identified during the examination conducted upon the second complainant's arrival at Tbilisi prison No. 8 on 13 October 2010. The investigator also ordered a forensic medical examination, which took place on 5 March 2012, and which concluded that the medical examination records of 11 October 2010 and 13 October 2010 revealed light injuries but did not establish when exactly these were sustained.<sup>5</sup> On 9 March 2012, the investigator again questioned the second complainant, who stated that he had been physically assaulted by the police.

4.4 On 15 February 2013, the prosecutor of the Investigation Unit of the Tbilisi Prosecutor's Office merged the investigations into the complainants' allegations. At the time of the State party's submission (made on 6 May 2014), the investigation was still pending.

4.5 The State party maintains that the communication should be rejected on the grounds that the complainants failed to exhaust domestic remedies and because the allegations are manifestly unfounded. In particular, the State party asserts that the second complainant never alleged that he was subjected to attempted rape, burned with cigarettes or threatened with being thrown through the window during official questioning or in other procedures at the domestic level. The State party notes that while the second complainant's lawyer requested on 2 November 2010 that he receive a forensic medical examination, this was only in relation to the complainant's diabetes. The State party also notes that the complainant has not given any evidence to the Committee to support his allegations that he was burned or subjected to attempted rape.

4.6 The State party also alleges that the complainants have not exhausted domestic remedies as required by article 22 (5) (b) of the Convention since they did not wait for the final outcome of the investigation into their torture allegations before applying to the Committee. The State party alleges that the complainant generally bears the burden of proof and must show that domestic remedies have been exhausted or that domestic remedies are ineffective. The State party referred to *R. v. France*, where the Committee decided that a communication was inadmissible because the author had not demonstrated that his appeals to the national remedies had little chance of success.<sup>6</sup>

4.7 The State party asserts that in the present case the complainants have not shown that domestic remedies have been ineffective, and that to the contrary, the State party's authorities have investigated their claims notwithstanding the complainants' inconsistent conduct. The State party contested the first complainant's assertion that the investigation into his allegations of ill-treatment commenced on 26 November 2011 (more than one year after his arrest), and submitted that the investigation was in fact launched soon after his arrest, on 6 November 2010, after the investigative authorities had received the second complainant's medical examination record. Nevertheless, the first complainant did not "express requisite due diligence" and complained to the Tbilisi Prosecutor's Office only a year after the alleged ill-treatment had occurred, which undermined the effectiveness of the investigation.<sup>7</sup> The State party noted that the first complainant had said, on 10 October 2010,

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<sup>4</sup> The State party submitted an English translation of the interrogation record of the second complainant, dated 11 November 2010.

<sup>5</sup> The State party submitted a copy of the report of the forensic medical examination.

<sup>6</sup> Communication No. 52/1996, decision of admissibility adopted on 10 November 1997.

<sup>7</sup> The State party referred to the European Court of Human Rights, *Varnava and others v. Turkey* (applications Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90), judgment of 18 September 2009, para. 161.

at the medical examination conducted after his placement in the temporary detention facility, that the injuries identified during that examination were sustained before his detention, and that he had no claims against the law enforcement officials. The State party also noted that the second complainant retracted his allegations of ill-treatment during his first interrogation on 11 November 2010 but the authorities nevertheless undertook efforts to obtain evidence and conducted a forensic medical examination after he reasserted his allegations during his second interrogation on 9 March 2012.

4.8 The State party notes that the Tbilisi Prosecutor's Office, which had launched the official investigation into the allegations, is independent from those implicated in the alleged ill-treatment, both institutionally and in practice, and that the investigative activities that had been conducted included medical examinations and multiple interrogations of the witnesses. In the light of the above-mentioned efforts undertaken by the investigative authorities, the State party maintains that the complainants should have waited for the final outcome of the investigation before applying to the Committee.

4.9 The State party also notes that on 25 June 2011, Tbilisi City Court found the complainants guilty of having committed crimes under articles 144 (kidnapping), 181 (extortion), 236 (illicit purchase, keeping, carrying, production, shipment, transfer or sale of firearms, ammunitions, explosive materials or explosive devices) and 260 (illicit preparation, production, purchase, keeping, shipment, transfer or sale of narcotics) of the Criminal Code of Georgia. The first complainant was sentenced to 30 years of imprisonment and the second complainant was sentenced to 32 years of imprisonment. By a judgment of 26 December 2011, the Tbilisi Court of Appeal upheld the decision of Tbilisi City Court. On 16 March 2012, the Supreme Court examined the appeals of the complainants and, after considering the facts of the case, modified the previous decisions, sentencing the first complainant to 24 years of imprisonment and the second complainant to 26 years of imprisonment.

#### **Complainants' comments on the State party's observations on admissibility**

5.1 On 28 July 2014, the complainants informed the Committee that as a result of an amnesty granted in 2012, the charges under articles 260 (possession of narcotics) and 236 (possession of ammunition) of the Criminal Code had been removed from their verdicts and their sentences had been reduced from 12 to 9 years of imprisonment.

5.2 Regarding the State party's claim that they failed to exhaust domestic remedies, the complainants refer to a letter that they received from the Ombudsman's office on 22 May 2014, to which was attached a copy of an order dated 19 May 2014 stating that the investigation into their claims had been transferred, on 29 March 2013, to the General Inspectorate of the Prosecutor's Office of Georgia. According to the complainants, the General Inspectorate had not conducted any investigative actions, and the last meaningful investigative action in their case had taken place in March 2012. This demonstrated that the domestic remedies available to them were ineffective. Furthermore, they alleged that one of the main suspects (T.A., see para. 2.4 above) was never questioned and that they were never asked to identify in a line-up the officers who had ill-treated them. On 5 September 2013, the complainants had filed a complaint with the prosecutor's office regarding its failure to identify and punish the individuals who had ill-treated them.

5.3 The complainants contest the State party's claim that the second complainant never raised with the domestic authorities his allegations concerning attempted rape and being burned with cigarettes. The complainants also note the risks that arise for prisoners who raise allegations of sexual assault, as they are likely to be labelled as homosexuals and exposed to a high risk of abuse by other prisoners. The complainants also state that on 15 April 2014 they obtained a medical expert's report concerning the second complainant, which reveals a scar on his hand resulting from local exposure to a high temperature, and a scar on his left buttock, consistent with his allegations of attempted rape. The complainants sent that report, together with a description of the treatment they endured, to numerous State institutions, including the President, the Ombudsman, the President of the Supreme Court and the Parliamentary Committees.

5.4 The complainants also contest the accuracy of the medical examinations that they received upon arrival in Tbilisi prison No. 8 on 13 October 2010 and maintain that the injuries documented in the medical records from the temporary detention facility, issued on 10 October 2010, could not have completely faded by the time the complainants were transferred. They claim that the doctor on duty at prison No. 8 failed to record their injuries, that the medical record issued by prison No. 8 on 29 February 2012 is inaccurate and that the forensic medical report from 2012 is also incorrect since it is based on those earlier documents. They submit that they complained to the prosecutor's office about the medic in prison No. 8 but the complaint was ignored.

5.5 The complainants also submit that the State party's officials sought to prevent the complainants from bringing their claim to the authorities and to the Committee and have threatened the complainants and a member of their family. The second complainant submits that he was forced to sign the testimony from his interrogation on 11 November 2010, in which it is written that he only made his claims of ill-treatment by police officers because he was angry at them. He states that the investigator threatened him and forced him to sign the testimony, which is in Georgian, a language that he does not read and barely speaks. The complainants also allege that they had asked a social worker in the prison on 17 June 2013 to make a copy of the communication that they intended to send to the Committee, but the deputy director of the prison intercepted it and sent it to the prosecutor's office, in accordance with article 14 (4) of the prisoner's code which permits such interference with prisoner correspondence when it threatens the public order or safety or the rights and freedoms of others. Their communication was not returned to them until 3 July 2013 and their subsequent complaint about it being withheld was never investigated. The complainants also submitted that the first complainant's son (the second complainant's brother) was beaten in October 2013 by attackers who told him that they were acting on orders from the Minister of Corrections and that he should tell the complainants to stop writing complaints. The second complainant alleges that he was also threatened by unidentified individuals while he was undergoing a medical examination in a clinic outside the prison in February 2014. The complainants refer to several other incidents where they were ill-treated or threatened in prison.

5.6 The complainants reiterate that the second complainant, who suffers from diabetes, was denied insulin injections for the entire period of his detention in the police station and the temporary detention facility, which resulted in him developing a decompensated form of diabetes and diminished eyesight.

#### **State party's additional observations on admissibility and the merits**

6.1 On 5 March 2015, the State party reiterated its observations with regard to the admissibility of the communication. It added that the investigations into the complainants' allegations, unified into one proceeding on 15 February 2013 by the prosecutor of the Investigation Unit of the Tbilisi Prosecutor's Office, were still ongoing.

6.2 The State party also maintained that the facts of the case did not disclose a violation of the Convention because even if the allegations of the complainants were assumed to be true, the alleged ill-treatment had not attained the minimum level of severity to reach the threshold of torture or other cruel, inhuman or degrading treatment or punishment. The State party maintained that "not all types of harsh treatment" fell within the scope of the Convention<sup>8</sup> and that the forensic medical examinations in the present case had revealed injuries that belonged to the category of light injuries without damage to the complainants' health. Furthermore, no injuries were identified on the complainants when they arrived at Tbilisi prison No. 8 on 13 October 2010, indicating that their injuries were not serious. According to the medical records, on 11 October 2010, upon placement in the temporary detention facility, the second complainant had a bleeding scratch on the upper part of his forehead and a small bruise in the area of his right cheekbone, his eyebrows and right jaw were swollen and he had multiple excoriations around the neck and both clavicles. He had

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<sup>8</sup> The State party referred to the European Court of Human Rights: *Soering v. the United Kingdom* (application No. 14038/88), judgment of 7 July 1989, para. 100; and *Stefan Iliev v. Bulgaria*, (application No. 53121/99), judgment of 10 May 2007.

declared that he had been subjected to ill-treatment by police officers. An investigation was launched on 6 November 2010; the arresting officers were questioned and denied ill-treating the complainant during or after the detention. They also stated that they had recorded in the arrest record only the injuries that they had visibly observed immediately after the arrest. When the complainant underwent another medical examination, upon being transferred to Tbilisi prison No. 8, no injuries were identified on him. On 11 November 2010, he retracted his allegations.

6.3 On 4 January 2012, the second complainant filed a complaint with the prosecutor's office reiterating his claims that he had been ill-treated during his arrest. On 1 March 2012, the investigator ordered a forensic medical review. The medical review took place on 5 March 2012; on the basis of the medical records of 11 October and 13 October 2010, the experts concluded that the second complainant had suffered light injuries, but were not able to deduce the exact time at which he sustained these. On 9 March 2012, the second complainant was questioned and again asserted that he had been ill-treated by the arresting officers, and he named an investigator (B.D.), claiming that the latter had assaulted him while he was in detention. He also stated that another officer (T.A.) had visited him in prison and threatened that his brother would be arrested and his sentence would be prolonged if he continued to voice complaints. The second complainant also complained that he had not been provided with insulin from the time of his arrest until his placement in the temporary detention facility.

6.4 With regard to the medical expert's opinion, dated 10 April 2014, submitted by the complainants to the Committee, the State party maintained that it had identified scar tissue on the second complainant's hand and concluded that it could have resulted from a burn, but could not assert that categorically. It had also identified a scar in the lower inner quadrant of the left buttock, but it was impossible to determine the object with which that injury had been inflicted. The expert had not been able to establish the exact time at which the second complainant had sustained those injuries. The State party maintained that, since those injuries were not reflected in the medical records upon their receipt in the temporary detention facility, they could have been sustained at any time after his arrest. Furthermore, the second complainant never mentioned those injuries in his complaint to the domestic authorities.

6.5 The State party noted that the investigative authorities had interrogated the officers who had taken part in the arrest and that the latter had "denied any fact of verbal or physical abuse against the complainants during or after the detention". The police officers referred to the record of the visual examination of the first complainant, where he had stated that he had "no complaints" upon being detained and that "the injuries identified on his body had appeared before his detention". The State party also submitted that some of the officers also "denied any fact of unlawful action" by the detective and investigator T.A., "as well as from other officers". The State party also refers to the available medical records of the two complainants and to the results of the forensic medical examination of 16 March 2012. It maintains that the results of the investigative activities with regard to the first complainant "clearly denied any acts of ill-treatment", and that "comprehensive and objective investigation is ongoing into the allegations of the second complainant, in accordance with the obligation of the State under the Convention."

6.6 The State party maintained that its officials' interrogation methods and practices, as well as their treatment of the present complainants, were fully consistent with the provisions of the Convention. In the State party's view, all of its investigative measures had been conducted impartially in line with the Convention and had revealed no signs of torture or other acts of cruel, inhuman or degrading treatment or punishment in the present case. The State party requested the Committee to find that there had been no violation of articles 1, 11, 12, 13 or 16 of the Convention.

#### **Complainants' comments on the State party's additional observations**

7.1 On 9 July 2015, the complainants noted that at their first court hearing, on 13 October 2010, their lawyer had tried to request a medical examination to document their injuries, but a judge of Tbilisi City Court had refused the request. The complainants filed a complaint before the Supreme Judicial Council and were informed that the judge had been

issued a disciplinary punishment, for six months, but they never received any documentation to confirm this. They only managed to obtain a forensic medical report in 2014.

7.2 The complainants reiterate that at the time of their submission to the Committee in 2015, the latest action for investigation of their torture allegations dated back to 21 March 2013, and that two of the individuals whom they accused (T.A. and A.A.) had never been questioned. They reiterated that the State party's authorities were waiting for the statute of limitations to expire in order to close the investigation.

7.3 In response to the State party's claim that the first complainant impeded the investigation by waiting to submit a complaint on 19 October 2011, the complainants respond that the first complainant was questioned on 3 November 2010, by an officer of the prosecutor's office (with the initials D.N.), but that the latter attempted to "convince" him not to file a complaint. Similarly, on 11 November 2010, the second complainant was forced to sign a document withdrawing his claims. The complainants noted that although the State party had referred to the judgment that the European Court of Human Rights had made in *Stefan Iliev v. Bulgaria*,<sup>9</sup> unlike in that case, they had not resisted arrest.

7.4 The first complainant challenges the State party's claim that his injuries were minor and did not amount to torture, and maintains that witnessing his son being beaten, strangled, subjected to attempted rape and being held for days without the insulin injections that he needed, in order to extract a confession for a crime that he had not committed, in itself constituted torture under the definition in article 1 of the Convention.

7.5 The complainants reiterate that they submitted numerous complaints to different State institutions, many of which had been forwarded to the prosecutor's office. They request the Committee to declare their communication admissible, to review it on the merits and to find violations of articles 1, 11, 12, 13 and 16 of the Convention.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

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

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has submitted that the communication should be declared inadmissible because investigations were launched by the Investigation Unit of the Tbilisi Prosecutor's Office on 12 November 2011 regarding the torture allegations made by the first complainant and on 6 November 2010 regarding the torture allegations made by the second complainant, and because the above-mentioned investigations were unified into one proceeding in 2013 and these were still ongoing. However, the Committee notes the uncontested allegation of the complainants that the latest substantive investigative actions in these proceedings took place in March 2012. The Committee also observes that the State party has, to date, not provided any information regarding the outcome of the proceedings. As five years have elapsed since the last substantive investigative action in respect of these cases, the Committee is of the view that the application of domestic remedies has been unreasonably prolonged, rendering them ineffective. Thus, the Committee is not precluded by article 22 (5) (b) of the Convention from examining the present communication.

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<sup>9</sup> The State party referred to the European Court of Human Rights: *Soering v. the United Kingdom* (application No. 14038/88), judgment of 7 July 1989, para. 100; and *Stefan Iliev v. Bulgaria*, (application No. 53121/99), judgment of 10 May 2007.

8.3 The Committee also recalls that for a claim to be admissible under article 22 of the Convention and rule 113 (b) of its rules of procedure, it must rise to the basic level of substantiation required for the purposes of admissibility.<sup>10</sup> The Committee notes the State party's argument that the communication is manifestly unfounded owing to a lack of substantiation. The Committee considers that the arguments put forward by the complainants raise substantive issues under articles 1, 12, 13 and 16 of the Convention, and that those arguments should be dealt with on their merits.

8.4 However, while the complainants have submitted that the State party has violated its obligations under article 11 of the Convention, they have provided no information to support this claim. The Committee therefore considers that this claim has been insufficiently substantiated and is inadmissible under article 22 of the Convention and under rule 113 (b) of its rules of procedure.

8.5 As the Committee finds no further obstacles to admissibility, it declares the communication admissible with regard to the claims under articles 1, 12, 13 and 16 of the Convention and proceeds with its consideration of the merits.

#### *Consideration of the merits*

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

9.2 The Committee notes the complainants' claims that they were subjected to torture, as defined in article 1 (1), and/or cruel, inhuman or degrading treatment or punishment, as defined in article 16 (1), of the Convention. The Committee notes that both complainants allege that they were interrogated for about eight hours by officers of the police and the prosecutor's office in the police station after having been apprehended and that during that time they were kept handcuffed, beaten, kicked, throttled, and threatened with being thrown out of the window. The Committee also notes that the first complainant alleges that the act of witnessing the second complainant, his son, being subjected to that treatment by the authorities in order to compel the complainants to confess to a crime itself amounted to torture under article 1 of the Convention.

9.3 The Committee observes that the medic on duty at the temporary detention facility recorded abrasions and bruises on one complainant on 10 October 2010, and on the other complainant on 11 October 2010, and that the injuries recorded were consistent with the complainants' accounts. While the State party notes that the reports of the subsequent medical examinations that the complainants received upon arrival in Tbilisi prison No. 8 on 13 October 2010 do not note any such injuries, and the forensic medical examinations ordered by investigators, which analysed the various medical reports, concluded that the injuries incurred by the complainants were not serious, in the view of the Committee the documentation from the temporary detention facility is sufficient evidence to corroborate the complainants' accounts. The Committee finds, on the basis of the evidence provided, that the complainants' accounts are credible. Those accounts, moreover, allege conduct by the State party's authorities which amounts to "severe pain and suffering", within the meaning of article 1 (1) of the Convention.

9.4 The Committee also notes the allegation that the second complainant, who is suffering from diabetes, was not allowed to have insulin injections for the entire period of detention in the police station and in the temporary detention facility, from 10 to 13 October 2010, which resulted in aggravation of his condition. The State party has not contested those claims. The Committee therefore finds that the above-mentioned treatment constitutes cruel and inhuman treatment within the meaning of article 16 of the Convention, and that the State party violated article 16 (1) of the Convention with regard to the second complainant.

9.5 As to the complainants' claim that the State party's officials violated article 12 of the Convention by failing to conduct a prompt and impartial investigation, the Committee

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<sup>10</sup> See, among others, communication No. 308/2006, *K.A. v. Sweden*, decision adopted on 16 November 2007, para. 7.2.

notes that the mere opening of an investigation is not sufficient to satisfy the State party's obligations.<sup>11</sup> In this regard, the Committee notes the complainants' claims, uncontested by the State party, that investigators did not order a forensic medical review of the complainants' medical records until March 2012, 16 months after officials first opened an investigation into the second complainant's allegations in November 2010, that investigators never questioned one of the individuals that the complainants accused of having tortured them (T.A.) and that no substantive investigative actions have been taken with respect to their cases since March 2012. While the State party has indicated that its investigation is continuing, it has not provided information to suggest that substantive investigative actions have been taken since March 2012, nor any indication of when a decision might be expected. The Committee considers that an investigation of more than six years in duration — including a delay of more than five years since the last substantive investigative actions occurred — does not satisfy a State party's obligation under article 12 of the Convention to ensure a prompt and impartial investigation whenever there are reasonable grounds to believe that an act of torture has been committed.<sup>12</sup>

9.6 The State party has also failed in its responsibility under article 13 of the Convention to ensure the right of the complainant to lodge a complaint, which presupposes that the authorities will provide a satisfactory response to such a complaint by launching a prompt and impartial investigation.<sup>13</sup> The complainants also submit that the State party's officials sought to prevent them from bringing their claim to the authorities and to the Committee and have threatened them and a member of their family. The second complainant submitted that he was threatened by an investigator who forced him to sign testimony denying his earlier torture claims. The complainants allege that prison officials intercepted their complaint to the Committee, and also that their family member was attacked and threatened by persons acting on behalf of the authorities, in response to the complainants' actions. The State party has not provided any information to refute this part of the communication. The Committee therefore also finds a violation of article 13 of the Convention.<sup>14</sup>

10. The Committee, acting under article 22 (7) of the Convention, is of the view that the facts before it disclose violations of article 12, and article 13 read in conjunction with article 1, of the Convention, with regard to both complainants, and violations of article 16 (1) of the Convention with regard to the second complainant.

11. Pursuant to rule 118 (5) of its rules of procedure, the Committee urges the State party to conduct an impartial investigation into the incidents in question, with a view to bringing those responsible for the victims' treatment to justice, and to provide the complainants with an effective remedy, including fair and adequate compensation for the suffering inflicted, in line with the Committee's general comment No. 2 (2008) on the implementation of article 2 by States parties, as well as medical rehabilitation. The State party is also under an obligation to prevent similar violations in the future. The Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps that it has taken in response to the present decision.

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<sup>11</sup> See communication No. 257/2004, *Keremedchiev v. Bulgaria*, decision adopted on 11 November 2008, para. 9.4.

<sup>12</sup> See communication No. 8/1991, *Halimi-Nedzibi v. Austria*, Views adopted on 18 November 1993, para. 13.5; or communication No. 269/2005, *Ben Salem v. Tunisia*, decision adopted on 7 November 2007, para. 16.7.

<sup>13</sup> See, among others, communication No. 503/2012, *Ntikarahera v. Burundi*, decision adopted on 12 May 2014, para. 6.4.

<sup>14</sup> See, among others, *Ben Salem v. Tunisia*, para. 16.7; or communication No. 261/2005, *Osmani v. Serbia*, decision adopted on 8 May 2009, para. 10.7.