



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

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**Committee against Torture**

**Communication No. 366/2008**

**Decision adopted by the Committee at its fifty-second session (28 April  
to 23 May 2014)**

<i>Submitted by:</i>	Mariano Eduardo Haro (represented by counsel, Ms. Silvia de los Santos)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Argentina
<i>Date of complaint:</i>	18 November 2008 (initial submission)
<i>Date of decision:</i>	23 May 2014
<i>Subject matter:</i>	Torture in prison
<i>Procedural issues:</i>	Other procedures of international investigation or settlement; failure to substantiate claims
<i>Substantive issues:</i>	Prompt and impartial investigation, right to redress
<i>Articles of the Convention:</i>	1, 2, 10–14 and 16



## Annex

### **Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-second session)**

concerning

#### **Communication No. 366/2008**

*Submitted by:* Eduardo Mariano Haro (represented by counsel, Ms. Silvia de los Santos)

*Alleged victim:* The complainant

*State party:* Argentina

*Date of complaint:* 18 November 2008 (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 23 May 2014,

*Having concluded* its consideration of communication No. 366/2008, submitted to the Committee against Torture by Eduardo Mariano Haro 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, his counsel and the State party,

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

#### **Decision under article 22, paragraph 7, of the Convention against Torture**

1. The author of the complaint is Eduardo Mariano Haro, an Argentine national, born on 17 November 1981. He claims to be a victim of violations by Argentina of articles 1, 2, 10–14 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. At the time of submission of the complaint, the author was being held in Prison Unit No. 6 in Rawson in Chubut province. The author is represented by Ms. Silvia de los Santos.

##### **Factual background**

2.1 The author lives in the city of Comodoro Rivadavia and worked as a mason before his arrest. He was arrested in 2001 and convicted by the First Criminal Chamber of Comodoro Rivadavia (hereinafter “the First Chamber”) on 21 June 2002 for the offences of voluntary manslaughter and serious bodily injury and sentenced to 12 years in prison. The author alleges that the trial was fraught with irregularities.

2.2 The author alleges that on 17 November 2003, while he was being held in local police station No. 2 of Comodoro Rivadavia, he was subjected to acts of violence, during which he suffered a superficial cut to the front of the neck and traumatic total ablation of the right testicle and partial ablation of the left testicle. The author was assisted by the fire brigade, who took him to Comodoro Rivadavia Regional Hospital (hereinafter “the Regional Hospital”).<sup>1</sup> The author alleges that on the same day his father was informed in a note from the chief officer of the police station that the author had deliberately injured himself. His father went to the Regional Hospital at once. The author was able to speak with him briefly, but only managed to tell him that “it was the police” before they were separated by the police officers who were at the hospital. However, the author alleges that he was able to recount all that had happened to a doctor, who in turn informed his father.

2.3 On 19 November 2003, the author’s father lodged a complaint about the police officers with the Public Prosecution Service of Comodoro Rivadavia. The Office of Prosecutor No. 2 of Comodoro Rivadavia immediately opened an investigation and requested information from the Regional Hospital regarding whether it was possible that the author could have injured himself and about his mental health in general. The Office consulted a forensic doctor of the judiciary to ascertain whether the author was fit to make a statement; asked local police station No. 2 to send it a record of all proceedings; and summoned the accused police officers, the police physician and persons detained in the same police station to make statements.

2.4 On 20 November 2003, the author was admitted to the mental health unit of the Regional Hospital. On the same day, a forensic doctor informed the Public Prosecution Service that the author was recovering from testicular surgery under sedation and was therefore not in a position to make a statement. On 4 December 2003, the Regional Hospital transmitted to the Public Prosecution Service a psychiatric report indicating that the author had experienced a brief psychotic episode; that he was suffering from a serious antisocial personality disorder; that he had initially been violent and uncooperative and shown psychopathic tendencies; and that he had been making good progress, and could therefore be discharged with outpatient follow-up. On 9 December 2003, the author was discharged and detained in local police station No. 1.

2.5 The author alleges that on 10 December 2003, the Assistance Office for Detainees and Convicted Prisoners appeared before the First Chamber and expressed the opinion that, in view of the author’s complaint against members of the police, his state of health and the lack of security and salubrity in the detention centre, it was recommended that he should be detained in the mental health unit of the Regional Hospital or, failing that, placed under house arrest.

2.6 On 12 December 2003, the Assistance Office for Detainees and Convicted Prisoners submitted an application for habeas corpus on behalf of the author, requesting a cessation of his detention in police station No. 1 or his house arrest. Meanwhile, the author’s father requested that the author be transferred to Prison Unit No. 14 in Esquel. In the end, the

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<sup>1</sup> The Committee also takes note of the police report of 17 November 2003, in which it is noted that the police officers who were on duty at the police station declared that the author had deliberately injured himself; that a sergeant found him in his cell, sitting on a pillow on the floor, completely naked and with blood on his chest; that there was an organ on the floor that looked like a testicle; that the author said that a spell had been cast on him; that the assistance of the fire brigade and a doctor was requested; and that the duty judge, the secretary of the First Chamber, the Criminal Division and the duty prosecutor were informed by telephone. When the cell was inspected, a metal object bearing blood stains was found and the body parts found were sent to the pathological anatomy unit of the Regional Hospital. Some detainees who were in the same police station as the author also stated that the author had deliberately injured himself.

author was transferred to police station No. 6. However, he claims that on 15 December 2003, his parents informed the First Chamber that he did not have a suitable cell or bed, which was affecting the healing of his wounds, and that they asked for a medical examination to be ordered to check the state of the author's wounds. This request was rejected by the Chamber. Both the Assistance Office and the author's father reapplied for a transfer.

2.7 On 6 January 2004, the mental health unit of the Regional Hospital issued a report in which it was stated that the author had been diagnosed as suffering from psychosis, was incapable of controlling and managing his actions, and was displaying depressive symptoms and manipulative and aggressive behaviour. Given the risk that he might pose to the safety of other patients, it was suggested that he be placed in a specialist health-care institution equipped with a penitentiary unit and permanent psychiatric care.

2.8 On 7 January 2004, the First Chamber applied to the government of Chubut province for a place in an appropriate detention facility for the author. On 20 January 2004, the Prison Service concluded that it was unnecessary to transfer the author to a specialist centre since he had been discharged from the mental health unit of the Regional Hospital, was continuing to receive the recommended medication and could have check-ups as an outpatient.

2.9 On 17 March 2004, the Criminal Unit of the Police informed the Public Prosecution Service that the expert's report on the object found in the author's cell, with which he had allegedly injured himself, did not provide any information that might be useful to the investigation.

2.10 On 23 March 2004, a forensic doctor informed the Public Prosecution Service that the nature of the author's injuries was such that they could have been self-inflicted and caused by the object found in his cell, and that the author had a psychotic disorder that could cause him to be aggressive and dangerous, both to himself and to others.

2.11 On 15 April 2004, the Chief Prosecutor of Comodoro Rivadavia judicial district ordered the case initiated by the complaint of the author's father to be closed, on the grounds that no evidence of an offence had been found. In his decision, the Prosecutor referred to the testimonies received from other detainees who were being held in adjacent cells and from third parties from outside the police force, including members of the fire brigade. He noted that, according to the reports of the forensic medical team, which in turn had taken into account the author's medical history, including the reports of the psychiatric unit of the Regional Hospital, and in view of the author's psychological and aggressive condition, he could have deliberately caused severe injuries to himself. Furthermore, the Prosecutor pointed out that the author had claimed to have been attacked by five or six police officers whom he knew by sight but had been unable to identify them or describe any of their physical characteristics. This did not seem credible, especially since they were supposedly police officers who had been on duty at the place of detention for some time.

2.12 Between February and June 2004, the author's father reported to the First Chamber on the author's conditions of detention on several occasions and repeated his request for a transfer to another prison unit. However, his requests were rejected. On 11 August 2004, the father submitted an application for habeas corpus, which was denied by the First Chamber. Subsequently, on 1 September 2004, the Assistance Office for Detainees and Convicted Prisoners applied to the First Chamber to guarantee minimum conditions of detention for the author.

2.13 On 3 September 2004, by order of the First Chamber, the author was transferred to unit No. 20 of the Borda psychiatric hospital in Buenos Aires. However, the author alleges that on 17 September 2004, the attending doctors applied to the judicial authorities for his

discharge since they believed that he was not suffering from any illness that would justify his internment in the centre.

2.14 Between November 2004 and April 2006, the author was moved between Prison Unit No. 15 in Río Gallegos and Unit No. 6 in Rawson, then back to Unit No. 15 and again to Unit No. 6.

2.15 On 23 August 2006, the author's father and sister asked the Attorney-General of Chubut province to reopen the case concerning the author's castration, and alleged that the investigation carried out was insufficient and based on questionable medical reports. In this regard, they noted that, on 13 June 2006, an interdisciplinary technical team from Prison Unit No. 6 had issued a report containing conclusions on the injuries sustained on 17 November 2003 that were contrary to those reached in the criminal investigation, in that this new report did not state that the testicular ablation had taken place on that date.

2.16 In response to the request, the Office of the Attorney-General commissioned officials from the Public Prosecution Service and Trelew city police to analyse the proceedings related to the complaint of castration submitted by the author's father in 2003.

2.17 On 9 October 2006, these officials informed the Attorney-General that, on the basis of the evidence contained in the file on the case initiated in relation to the author's castration and the statements obtained from the persons questioned, there was nothing to indicate that an offence had been committed and, on the contrary, all the evidence collected suggested that the author had deliberately injured himself. There were therefore insufficient grounds to reopen the case. They drew attention to statements given by a number of persons who had been detained in the same unit as the author and who maintained that the author had injured himself, and removed his testicles himself. Some of the detainees also stated that the author had been acting strangely and aggressively in the days leading up to the accident. For example, Mr. M., who was summoned to make a statement regarding the day of the events, stated that on arriving at the place in which the author was being held, he saw him sitting on a pillow, in silence, seemingly withdrawn from reality, with blood on his body, that beside him, on the floor of the cell, there was a testicle, and that the author had simply said he had been bewitched.

2.18 On 6 and 20 November 2006, the judicial investigative police submitted two additional reports to the Office of the Attorney-General, which confirmed its initial recommendation. The reports included the statements of additional police officers, a firefighter who had come to the author's aid in prison and a person who had been held in the same unit as the author, which corresponded to the statements previously submitted to the Office of the Attorney-General.

2.19 On 30 January 2007, the Office of the Attorney-General of Chubut asked the Office of the Under-Secretary for Human Rights to provide a list of impartial and independent medical professionals who could conduct a physical and psychological examination of the author. On 7 February 2008, the Office of the Attorney-General arranged a medical examination with one of the psychiatrists suggested by the Office of the Under-Secretary, who was a member of the Argentine Psychosocial Work and Research Group, for 15 and 16 February 2008. However, the medical assessment could not be conducted due to a lack of administrative coordination and the opposition of the author's defence counsel. On 31 March 2008, the First Chamber dismissed the defence counsel's objection to the medical examination on the grounds that it had been ordered by the Office of the Attorney-General in the context of an investigation that was unconnected to the sentence enforcement proceedings being supervised by the Chamber.

2.20 At the request of the author's defence counsel, on 7 December 2007, a psychologist of their choosing issued a clinical psychological report on the author's mental state of health which concluded that the author was suffering from a "persistent post-traumatic

personality disorder". The report also indicated that: "The possibility of the mutilation being self-inflicted by the patient, as the result of an act brought about by a psychotic state, should be categorically ruled out since the patient currently presents none of the indicative signs of such a pathology, which is incurable, and although this might suggest a case of schizophrenia in remission, there should have been disruptive episodes and non-symbolized events in his past". In addition, the report indicates that the author required psychological care and psychiatric medication, given the risk of depression-related suicide, as well as hormone treatment, under the supervision of an endocrinologist.

2.21 In the light of the medical report, in December 2007 the author asked the First Chamber either to release him or, alternatively, to place him under house arrest. On 26 December 2007, the First Chamber declared the author's request to be inadmissible. In addition, the Chamber asked the prison authorities to organize an urgent interdisciplinary assessment of the author's mental state of health and its development with a view to considering the possibility of his being moved up, on an exceptional basis, to the probationary stage of the four-stage prison programme leading to release. In February 2008, the author filed an appeal in cassation with the High Court of Chubut against the decision of the First Chamber.

2.22 The author alleges that on 7 August 2008, his sister was intercepted by unknown persons who forced her to enter a car, jabbed her in the left hand, and then threw her out onto the street. The author's mother filed a complaint about the incident with the Public Prosecution Service of Chubut province, but the complaint was dismissed. The author alleges that his sister was subjected to reprisals on account of the complaints he and his father were making in relation to his case.

2.23 On 27 April 2009, the First Chamber ordered that the author be moved onto the probationary stage of the four-stage prison programme, allowing him a monthly temporary release of 72 hours. The author was released on parole on 19 August 2009.

### **The complaint**

3.1 The author alleges that he is the victim of violations by the State party of his rights under articles 1, 2, 10, 11, 12, 13, 14 and 16 of the Convention.<sup>2</sup>

3.2 The author maintains that while being held at Comodoro Rivadavia local police station No. 2 he was subjected to constant ill-treatment by the police on duty in the detention centre and that on 17 November 2003 he was subjected to acts of violence and torture, during which he suffered a bilateral testicular ablation and other injuries to the neck area. Although a complaint was lodged with the Public Prosecution Service in respect of these acts, there was no effective and impartial investigation. As a result, the complaint was arbitrarily dismissed and his aggressors were not punished.

3.3 The traumatic events to which he was subjected and their after-effects have seriously and irreparably affected his life and that of his close family members. He insists that the ill-treatment that was in violation of the Convention lasted for the entire duration of his detention. Despite the complaints of torture and ill-treatment and the repeated requests by the author's family, including an application for the case to be reopened submitted on 23 August 2006, the judicial authorities failed in their duty to investigate. Only the Office of the Attorney-General carried out general inquiries, which concluded with a refusal to reopen the case. However, no judicial authority has properly considered and examined the complaint. He also points out that the initial complaint was dismissed primarily on the basis

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<sup>2</sup> The Committee notes that in the complaint the author invokes these articles of the Convention without individually substantiating each of the alleged violations.

of medical reports that suggested he had deliberately injured himself. However, at the request of his defence counsel, he underwent a new psychological exam, the results of which contradicted and discredited the reports on the state of his mental health that had been examined by the Public Prosecution Service when it ordered his case to be dismissed.

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

4.1 On 2 February 2009, the State party submitted its observations on the admissibility of the complaint and requested that the Committee declare it inadmissible in accordance with article 22, paragraph 5 (a), of the Convention, since the author himself stated in his complaint that he had lodged a complaint with the Inter-American Commission on Human Rights.

4.2 Furthermore, the complaint does not comply with the provisions of rule 113 (f) of the Committee's rules of procedure (CAT/C/3/Rev.5) with respect to the prolonged period of time elapsed between the exhaustion of domestic remedies and the submission of the complaint to the Committee.<sup>3</sup> The complaint submitted to the competent authorities concerning the alleged acts of torture and ill-treatment in the police station was dismissed by the Chief Prosecutor of Comodoro Rivadavia in April 2004. Over the next five years, the author did not lodge any complaints with an international organization.

4.3 The State party maintains that, between 2006 and 2008, the author was visited by various authorities while he was serving his sentence in Prison Unit No. 6 in Rawson, including by the Office of the Under-Secretary for Prison Affairs and the Office of the Ombudsman for the Prison System. In addition, on 7 December 2007, a visit by a psychologist selected by the author's defence counsel was authorized in order to prepare a report on his mental health. This report recommended psychological care and psychiatric medication, which were duly provided. Furthermore, the State party asserts that the Office of the Under-Secretary for Human Rights provided assistance to the father and other family members to enable them to travel from Comodoro Rivadavia to visit the author.

#### **Complainant's comments on the admissibility of the complaint**

5.1 On 7 April 2009, the author submitted his comments on the admissibility of the complaint.

5.2 In relation to the requirement established in article 22, paragraph 5 (a), of the Convention, the author explains that the complaint submitted to the Inter-American Court of Human Rights was part of proceedings instituted by another person, Mr. I.E.T. In this connection, on 23 January 2009, the Executive Secretary of the Inter-American Court of Human Rights informed the author that in the case in hand only the facts related to Mr. I.E.T, his mother and his siblings were being considered. The Executive Secretary invited the author to submit an independent petition if he believed that his rights had been violated. The author alleges that he never submitted such a petition, and that therefore the case before the Committee has not been and is not being considered under any other international investigation or settlement procedure.

5.3 With regard to the time elapsed between the exhaustion of domestic remedies and the submission of the present complaint to the Committee, the author maintains that after his complaint of torture was shelved in 2004, he applied for various judicial remedies and submitted complaints to the competent authorities about the conditions of his detention and medical care, and about the constant transfers between different detention centres. He

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<sup>3</sup> In the version of the rules in force at the time the State party submitted its observations (CAT/C/3/Rev.4), this provision corresponded to rule 107 (f).

reiterates that, on 23 August 2006, he requested that his complaint of torture, which had not yet been resolved, be reopened by the Attorney-General of the Province of Chubut.

5.4 Furthermore, he alleges that he is constantly punished by the prison authorities and that he has challenged every punishment. Nonetheless, all his challenges and subsequent appeals, cassation proceedings and extraordinary appeals have been rejected.

#### **State party's observations on the merits**

6.1 On 14 September 2010, the State party submitted its observations on the merits of the complaint and forwarded to the Committee a copy of the judicial proceedings before the First Chamber, the Public Prosecution Service of Comodoro Rivadavia and the Office of the Attorney-General of Chubut.

6.2 The State party notes that the case brought before the Public Prosecution Service of Comodoro Rivadavia in relation to the castration of the author in police station No. 2 was closed on 15 April 2004 because no evidence was found to indicate that an offence had been committed. Subsequently, in 2006, the author's family requested that the Office of the Attorney-General of Chubut reopen the case. In response to this request, the Office commissioned officials of the Public Prosecution Service and the Trelew city police to analyse the proceedings in relation to the complaint of castration submitted by the author's father. After studying the file and undertaking the necessary investigative measures, it was concluded that there were insufficient grounds for reopening the case.

6.3 Faced with persistent questioning about the author's state of health and the quality of the medical reports issued, on 7 February 2008, the Office of the Attorney-General scheduled a medical examination with one of the psychiatrists suggested by the Office of the Under-Secretary for Human Rights. However, the medical assessment could not be conducted due to a lack of administrative coordination and the opposition of the author's defence counsel.

6.4 On 5 May and 12 December 2006, representatives of the Office of the Under-Secretary for Prison Affairs, accompanied by the author's defence counsel, and representatives of the Office of the Ombudsman for the Prison System visited the author in Prison Unit No. 6. In addition, the Office of the Under-Secretary for Human Rights contacted the social assistant at the detention centre to enquire about the author's condition on several occasions.

#### **Additional information submitted by the author**

7.1 The author submitted additional information to the Committee on 4 January and 12 December 2011, 11 May 2012 and 29 April 2013.

7.2 The author relates, *inter alia*, that he underwent various medical examinations between 2009 and 2010 that confirmed that he had suffered the loss of his testicles, that he might undergo surgery for aesthetic purposes, and that he needed therapeutic support to help treat mental health problems. He attaches a new psychological report, prepared by the specialist selected by his defence counsel in December 2007, who concluded that, as had been the case in 2007, he did not find any symptomatic signs of hallucinatory schizophrenic behaviour which would suggest that it was an act of self-mutilation.

7.3 The author reiterates the allegations presented in his initial submission. He asserts that at least four medical and psychological reports — the report of the Penitentiary Psychiatric Unit of the Borda hospital dated 10 September 2004, the report of the psychologist selected by his defence counsel dated 8 December 2007, the report of two psychologists from the Committee for the Protection of Health, Ethics and Human Rights dated 30 December 2009 and the report of the Psychopathology Service of the National

University of Córdoba dated 9 December 2010 — support the conclusion that he is suffering from a “lasting personality transformation following a very stressful experience of an extremely aggressive nature, with marked schizoid traits”, which would appear to confirm that he was treated in a way that violated his rights under the Convention. He maintains that he was improperly administered medication to prevent him from testifying against police officers in the context of his complaint of torture and ill-treatment.

7.4 In addition, he alleges that he did not receive appropriate medical treatment once he had returned to the detention centre after being discharged; that his family was either prevented or impeded from visiting him both at the Regional Hospital and in the detention centre; that he was subjected to conditions of detention that were contrary to the Convention, prolonging the violation of his rights that had begun on 17 November 2003, given that he did not have a mattress or basic hygienic facilities, such as a nearby bathroom and hot water; and that he was kept in crowded premises.

7.5 The authorities of the detention centres in which he was detained continually subjected him to arbitrary punishments, including temporary isolation, without informing him of the reasons for the punishments. What is more, he did not have an opportunity to exercise his right to a defence against these punishments.

7.6 The author’s close family members were also the victims of treatment that was contrary to the Convention since they received death threats and were subjected to humiliating body searches every time they came to visit him at the detention centre.

7.7 The author maintains that the State party must adopt comprehensive reparation measures in order to guarantee his right to health, including the necessary surgery and psychological treatment; properly and effectively investigate the events of November 2003 and punish those responsible; make a public statement condemning acts of torture committed by public servants in the exercise of their duties; and grant the author and his family compensation for material and moral damages amounting to US\$ 2,500,000.00, plus costs and defence expenses.

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

### *Consideration of admissibility*

8.1 Before considering any claims contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention.

8.2 The Committee takes note of the State party’s observation that the complaint is inadmissible on the grounds that the author previously submitted a complaint to the Inter-American Commission of Human Rights. The Committee notes, however, that on 23 January 2009, the Executive Secretary of the Inter-American Commission of Human Rights informed the author that he could not submit a complaint in the context of a complaint submitted by other persons, and invited him to submit an independent petition if he believed that his rights had been violated. Subsequently, on 26 December 2009, the author submitted a complaint to the Inter-American Commission of Human Rights, which he withdrew on 10 May 2012, before the Commission had had the chance to transmit the complaint to the State party or to consider it. In the circumstances, the Committee considers that the complaint should not be considered as being or having been examined under any other procedure of international investigation or settlement, within the meaning of article 22, paragraph 5 (a), of the Convention. Consequently, the Committee finds that there is no obstacle to the admissibility of the complaint in accordance with article 22, paragraph 5 (a), of the Convention.

8.3 In relation to the requirement set out in article 22, paragraph 5 (b), of the Convention, the Committee takes note of the complaint of torture lodged by the author’s

father, which was dismissed by the Public Prosecution Service on 15 April 2004; the application to reopen the case submitted by the author's father and sister; the decision of the representatives of the Public Prosecution Service on 9 October 2006, concluding that there were insufficient grounds to order the reopening of the case; as well as various procedures undertaken by the author's family before the judicial authorities to convince them to consider the author's complaint of torture. Given the circumstances and the absence of observations from the State party querying the lack of exhaustion of domestic remedies, the Committee finds that there is no obstacle to the admissibility of the complaint in accordance with article 22, paragraph 5 (b), of the Convention.

8.4 The Committee takes note of the State party's observation that the complaint should be declared inadmissible in accordance with rule 113 (f) of the Committee's rules of procedure on the grounds that the time elapsed since exhaustion of domestic remedies was excessively prolonged. The Committee considers that the period between 9 October 2006, when the request to reopen the case was denied, and the submission of the present complaint on 18 November 2008 was not so unreasonably prolonged as to render consideration of the claims unduly difficult for the Committee or the State party. Consequently, the Committee finds that there are no obstacles to admissibility under rule 113 (f) of the Committee's rules of procedure.

8.5 The Committee takes note of the author's allegations that while he was detained in Comodoro Rivadavia police station No. 2 he was subjected to ill-treatment and torture and that the State party failed to conduct a proper and effective investigation leading to the punishment of the perpetrators. The Committee considers that the author's complaint is sufficiently substantiated for the purposes of admissibility. Consequently, the Committee finds the communication admissible and proceeds to its consideration of the merits.

#### *Consideration of the merits*

9.1 The Committee has considered the communication in the light of all the information submitted by the parties, in accordance with article 22, paragraph 4, of the Convention.

9.2 The Committee takes note of the author's allegations that he was subjected to torture and ill-treatment by the police at the Comodoro Rivadavia police station and that on 17 November 2003 he was the victim of a bilateral testicular ablation and other injuries to the neck area; that the complaint submitted to the Public Prosecution Service on 19 November 2003 was arbitrarily dismissed, primarily on the basis of incorrect medical reports, as shown by the clinical psychology report of 7 December 2007 prepared at the request of his defence counsel; that his request to have the case reopened was considered superficially by representatives of the Public Prosecution Service; and that his complaint was never considered by a judge despite the seriousness of his injuries. In these circumstances, he alleges that the State party's judicial authorities did not take measures to conduct a proper and effective investigation and punish those responsible. On the contrary, they obstructed his defence by improperly administering medication to him so that he could not testify against the police officers responsible. As a result, his complaint was arbitrarily dismissed and his aggressors were not punished.

9.3 The Committee notes that, when considering the author's complaint of alleged torture, between 19 November 2003 and 15 April 2004, the Office of Prosecutor No. 2 of Comodoro Rivadavia requested information about the state of the author's physical and mental health from both the prison authorities and the Regional Hospital; that it took statements from the police officers who had been on duty on 17 November 2003, and from third persons unrelated to the complaint, including the doctors and the member of the fire brigade who had come to the author's assistance, and other detainees who had been in the same unit as the author. Subsequently, between 23 August 2006 and 20 November 2006, an official from the Prosecutor's Office and a police officer attached to the Public Prosecution

Service re-examined the information contained in the file and interviewed some of the persons and authorities involved or present when the facts of the complaint took place, who confirmed the statements or opinions initially given to the Office of the Prosecutor.

9.4 Based on a reading of the dismissal decision of the Office of Prosecutor No. 2 of Comodoro Rivadavia dated 15 April 2004 and the report of the representatives of the Public Prosecution Service on the request to reopen the case dated 9 October 2006, in addition to the reports of the judicial investigation police dated 6 and 20 November 2006, the Committee understands that the decision to dismiss the author's complaint was not based solely on the medical reports on the author's state of health, but also on evidence, reports and statements obtained from various sources, including persons, such as the firefighter who came to the author's assistance and other detainees who were in the same unit, who had no apparent conflict of interest, which concurred. Furthermore, the Committee considers that, given the contradictions between the medical and psychological reports on the state of the author's mental health, these reports do not constitute fully convincing evidence that could help clarify the question of who was responsible for the facts of the complaint. In these circumstances, the Committee considers that it is not able to conclude, based on the information contained in the file, that the investigation into the facts that took place on 17 November 2003 lacked the impartiality required under articles 12 and 13 of the Convention. Consequently, the Committee finds that it is not possible to conclude from the information in the file that the author was the victim of treatment that was in violation of the obligations contained in the Convention in relation to those facts.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, finds that the facts before it do not indicate a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[Adopted in English, French, Spanish and Russian, the Spanish 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.]

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