



International Covenant on Civil and Political Rights

Distr.: General
5 September 2017

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2163/2012*, **

<i>Communication submitted by:</i>	Kh.B.
<i>Alleged victim:</i>	Kh.B.
<i>State party:</i>	Kyrgyzstan
<i>Dates of communication:</i>	17 October 2011 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 16 December 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	13 July 2017
<i>Subject matter:</i>	Author's right to presumption of innocence, and his honour and reputation interfered with by a parliamentary resolution
<i>Procedural issues:</i>	Substantiation of claims; admissibility — incompatibility; exhaustion of domestic remedies
<i>Substantive issues:</i>	Effective remedies; presumption of innocence; unlawful attacks on honour and reputation
<i>Articles of the Covenant:</i>	2 (1) and (3), 14 (2) and 17 (1)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5

1. The author of the communication is Kh.B., a national of Kyrgyzstan born in 1956. He claims that the State party violated his rights under articles 2 (1) and (3), 14 (2) and 17 (1) of the Covenant. The author is unrepresented. The Optional Protocol entered into force for Kyrgyzstan on 7 January 1995.

* Adopted by the Committee at its 120th session (3-28 July 2017).

** The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, José Manuel Santos Pais, Yuval Shany and Margo Waterval.



The facts as submitted by the author

2.1 The author is an ethnic Uzbek from the Osh region of Kyrgyzstan. In May and June 2010, numerous attacks against ethnic Uzbeks took place in the cities and regions of Osh and Jalal-Abad in the south of Kyrgyzstan. In May 2010, the author gave a speech at Jalal-Abad concerning the developments in Kyrgyzstan, in which he criticized the law enforcement and other State institutions. After the speech, he became a target for persecution on ethnic grounds and had to leave the country.

2.2 On 16 June 2011, the parliament of Kyrgyzstan passed a resolution on the information from the temporary parliamentary commission on the investigation into the 2010 events in the south of Kyrgyzstan. In paragraph 7 of the resolution, the author was listed as one of the organizers of the events and as a participant in nationalistic and separatist activities. At that time, the author had been the subject of an investigation but no judicial proceedings had been brought against him. In paragraph 21 of the resolution, the prosecutor general's office and Supreme Court were called upon to consider the possibility of confiscating the property of the organizers of the events, on the basis of the investigation and judicial decisions. The author claims that the resolution was published widely and led to the creation of self-organized groups in southern Kyrgyzstan that demanded the author's property be nationalized.

2.3 On an unspecified date in August 2011, the author filed a complaint with the Constitutional Chamber of the Supreme Court, requesting that the Court declare as unconstitutional paragraphs 7 and 21 of the resolution. On 22 September 2011, the Court notified the author by letter that the Chamber had not yet been formed and that he should resubmit his complaint when the Chamber was functioning. According to the author, there is no other means to challenge an act of parliament.

2.4 In his additional submission, received on 11 December 2012, the author stated that, on 28 October 2011, the Jalal-Abad City Court had sentenced him in absentia to life imprisonment, with the confiscation of his property, on charges including separatism, organization of mass disorders and killings. On 31 January 2012, the Jalal-Abad Regional Court confirmed the trial court's decision.

The complaint

3.1 The author alleges that the speaker of parliament who signed the resolution knowingly violated his right to presumption of innocence, thereby violating article 2 (1) of the Covenant.

3.2 The author also alleges that, by passing its resolution of 16 June 2011, parliament violated article 14 (2) of the Covenant, namely, his right to be presumed innocent until proven guilty by the court. He states that the resolution would have had a negative influence on the courts and would have pre-decided the outcome of any trial against him.

3.3 The author claims that his honour and reputation were arbitrarily attacked by the speaker of the parliament who signed the resolution that falsely labelled him as a separatist and an organizer of the 2010 events in the south of Kyrgyzstan, in violation of article 17 of the Covenant.

3.4 The author asks the Committee to find his claims admissible, to find that paragraph 7 of the parliamentary resolution violated his rights under the above-mentioned articles and to urge the State party to bring the resolution into accordance with the national legislation and the provisions of the Covenant.

State party's observations

4.1 In a note verbale dated 4 October 2012, the State party submits that the court decision dated 28 October 2011, by which the author was sentenced, and the appeal court decision dated 31 January 2012 were based on witness statements and on the materials of the criminal investigation, and adopted in accordance with the law.

4.2 The State party submits that the author has the right to complain against the parliamentary resolution to the Constitutional Chamber of the Supreme Court after it is formed.

Author's comments on the State party's observations

5. In his response, submitted on 28 November 2012, the author argues that the State party's observations are mainly irrelevant to the claims raised in his complaint since he did not raise issues concerning his trial. The author reiterates his original claim concerning the parliamentary resolution. He also claims that the trial court decision had been based on a linguistic analysis of his May 2010 speech in Jalal-Abad by the professors of the National Academy of Sciences, who were not authorized to perform such an analysis. He provides information on his multiple requests to the prosecutor's office and the courts to reopen criminal proceedings in his case on the basis of newly discovered circumstances, namely, an analysis of his speech carried out independently on 6 March 2012, and lack of response to his complaints.

Further submissions by the parties

6. On 25 January 2013, the author submitted an additional complaint under article 2 (3) (b) of the Covenant. He claims that his requests to the prosecutor's office and to the courts concerning the reopening of the criminal proceedings in his case on the basis of newly discovered circumstances have not been duly processed or addressed.

7. In a note verbale dated 10 September 2013, the State party provided details and dates of the replies sent to the author by the prosecutor's office and the courts concerning his requests to reopen the criminal proceedings on the basis of newly discovered circumstances. The State party also submits that the author's supervisory review appeal in his criminal case is pending before the Supreme Court and that all his complaints concerning his criminal case will be considered by that Court together with his appeal. According to the State party, the consideration of the author's civil claim for damages for defamation against the speaker of the parliament had been suspended by the Pervomaysky District Court in Bishkek until 8 September 2011, since it did not fulfil the requirements for the submission of a claim, as specified in articles 132 and 133 of the Civil Procedure Code. On 13 September 2011, the claim had been returned to the author.

8. On 5 November 2013, in his response to the State party's comments, the author mainly repeats his claims that the prosecutor's office and the courts had not duly processed his complaints. He claims that he never received back his civil claim for damages from the Pervomaysky District Court in Bishkek and thus could not appeal its decision.

9. In a note verbale dated 24 February 2017, the State party states that, after the events in May 2010, the author was charged under articles 233 (1)-(3) (on mass riots), 295 (1) (on separatism), 299 (2) (1 and 3) (on the acquisition, issuing, storage, dissemination, transportation and sending of extremist materials) of the Criminal Code. On 20 May 2010, the Jalal-Abad City Court authorized, in the author's absence, his pretrial detention. On 19 August 2011, the Jalal-Abad City Court started consideration of the author's case. Responding to the author's allegations, the State party provides copies of all the replies sent to the author by the prosecutor's office and the courts regarding his request to reopen criminal proceedings on the basis of newly discovered circumstances. The State party submits that all the decisions had been sent to the address indicated by the author and his claims that he did not receive them are groundless. The State party states that the author has not exhausted domestic remedies on the claims he raises before the Committee and that his submission should be considered inadmissible in accordance with article 5 of the Optional Protocol.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

10.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

10.3 The Committee takes note of the author's claim that he has exhausted all the effective domestic remedies available to him. In the absence of any objection by the State party in regard of the author's claims under articles 2 (1), 14 (2) and 17 (1) of the Covenant, and taking into account that the author did not have a possibility to complain to the Constitutional Court, which was not formed for an unreasonably long period, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met for the purpose of admissibility.

10.4 With regard to the author's claims under article 2 of the Covenant, the Committee recalls that the provisions of that article, which lay down the general obligations for State parties, cannot by themselves and standing alone give rise to a claim in a communication under the Optional Protocol. The Committee considers that the author's claim to this effect cannot be sustained, and that accordingly it is inadmissible under article 2 of the Optional Protocol.¹

10.5 The Committee notes the author's claims that his honour and dignity were attacked arbitrarily by the adoption of the parliamentary resolution. The Committee observes however, that the author has not provided any details on the consequences that the adoption of the resolution has had with respect to his honour and reputation. It considers the author's claim under article 17 (1) of the Covenant insufficiently substantiated for the purposes of admissibility, and inadmissible under article 2 of the Optional Protocol.

10.6 In the absence of any challenge to the admissibility of the author's claim under article 14 (2) of the Covenant, the Committee declares it admissible, and proceeds to its consideration on the merits.

Considerations of the merits

11.1 The Committee has considered the present communication in light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

11.2 The Committee notes the author's claim that his right to presumption of innocence under article 14 (2) of the Covenant was violated by the parliamentary resolution, in which he was listed as one of the organizers of the 2010 events in the south of Kyrgyzstan and as a participant in nationalistic and separatist activities. The Committee refers to its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, according to which article 14 (2) of the Covenant contains procedural guarantees available to persons charged with a criminal offence (para. 3). The Committee notes that, in May 2010, the author was charged with, inter alia, separatism and organizing a mass riot, and that a criminal investigation against him was ongoing at the time of adoption of the resolution. In the light of that, the Committee notes that the facts as presented by the author in his claim under article 14 (2) of the Covenant fall under the Committee's definition of "criminal charges" in the meaning of article 14 (1) of the Covenant. The Committee, however, notes that the author has not provided any information indicating how the resolution — a political document — could have affected the criminal proceedings in his case. Moreover, he has provided neither any information on criminal proceedings against

¹ See, for example, communications No. 1551/2007, *Moses Solo v. Canada*, Views adopted on 27 March 2009, para. 7.3; and No. 1887/2009, *Peirano Basso v. Uruguay*, Views adopted on 19 October 2010, para. 9.4.

him nor a copy of the decision of the trial court dated 28 October 2011. Furthermore, the author has neither raised complaints concerning possible deficiencies in his trial, nor specified how the parliamentary resolution had or could, in the eyes of a reasonable observer, have had affected its outcome. The Committee thus finds that the author has failed to sufficiently substantiate that the parliamentary resolution had an effect on the final verdict in his case. The Committee concludes that the facts as presented by the author do not allow it to find a violation of his rights under article 14 (2) of the Covenant.

12. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it does not disclose a violation by the State party of the author's rights under article 14 (2) of the Covenant.
