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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2707/2015*, **

Communication submitted by:	Saodat Kulieva (represented by counsel, Gulchekhra Kholmatova)
Alleged victims:	The author and her son, Khurshed Bobokalonov (deceased)
State party:	Tajikistan
Date of communication:	23 February 2015 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 21 December 2015 (not issued in document form)
Date of adoption of Views:	10 March 2020
Subject matter:	Torture and death of the author's son in police custody
Procedural issue:	None
Substantive issues:	Right to life; torture; prompt and impartial investigation
Articles of the Covenant:	6 and 7, read alone and in conjunction with 2 (3) (a)
Article of the Optional Protocol:	None

1. The author of the communication is Saodat Kulieva, a national of Tajikistan born in 1954. She submits the communication on her own behalf and on behalf of her son, Khurshed Bobokalonov, also a national of Tajikistan, born in 1976 and deceased in 2009. She claims that the State party has violated her son's rights under articles 6 and 7, read alone and in conjunction with article 2 (3) (a), and her own rights under article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant. The Optional Protocol entered into force for the State party on 4 April 1999. The author is represented by counsel.

* Adopted by the Committee at its 128th session (2–27 March 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

The facts as submitted by the author

2.1 On 27 June 2009, at approximately 10 p.m., the author's son was returning home from the gym, carrying a bag. In Rudaki Avenue, he was stopped by a police patrol. The officers asked the author's son to show them the contents of the bag. As he refused, a fight ensued between him and approximately 10 police officers. Subsequently, he was forced into a police vehicle and taken to the Department of Internal Affairs of Ismoil Somoni district in Dushanbe, Tajikistan.

2.2 On 28 June 2009, at approximately 2 p.m., the author was informed, in a telephone call with her daughter in law, of her son's death. When the author arrived at the morgue, a representative of the Prosecutor's Office of Ismoil Somoni district informed her that her son had been drunk and had died because of vomiting. The author was not allowed to see the body as the medical examination had still to be conducted. The author sought in vain clarification from the Department of Internal Affairs of Ismoil Somoni district, where her son had been taken the previous night, but was not allowed to enter the building.

2.3 Later that day, she gained access to the police premises and met two of her son's friends there. They had witnessed his apprehension and had accompanied him there. They were all put in the police vehicle but in different sections. When the police officers took the author's son out of the vehicle, his friends saw that his lips were blue and he was shaking and vomiting. The author's son died before the arrival of the ambulance. The author considers that her son's friends were coerced into to giving false testimonies, as following the death of her son they avoided meeting with her or talking to her even during the funeral.

2.4 Moreover, when her son's body was brought home, the author saw that it was covered with massive bruises and haematomas, including abrasions on the nose, temple and chin, and haematomas on the head. When the corpse was washed in the presence of relatives and a friend of the author's son, numerous bruises were observed all over the body; the face was blue and there were two cuts from a sharp object, one on the chin and another on the back. The legs and feet were badly beaten, as the author's son resisted being forced into the police vehicle, pushing back with his legs. On 30 June 2009, the author took possession of her son's clothing and found that it was dirty, ripped, wet and bloodstained.

2.5 According to the results of the forensic medical examination of 28 June 2009, the author's son died of asphyxia from vomiting. The author disagreed with that finding and, on 2 July 2009, she applied to the Prosecutor General's Office requesting an investigation into the circumstances of her son's death. Her complaint was redirected to the Prosecutor's Office of Ismoil Somoni district, which, on 6 July 2009, instituted criminal proceedings under article 108 (2) of the Criminal Code of Tajikistan (death by negligent conduct). On 21 August 2009, the author requested the Prosecutor General's Office to inform her about the results of the investigation and provide her with a copy of the forensic medical report. However, the Prosecutor General's Office refused to provide the forensic medical report as the examination had been conducted within the framework of the investigation and was thus considered to be an investigatory act. The author received the report only on 28 August 2009.

2.6 On 5 September 2009, the investigation was suspended owing to a failure to identify any culprit. The author's counsel was able to study the case file for the first time only two months later, on 4 November 2009. Between May and September 2011, the case was opened three times but closed for lack of corpus delicti. The author claims that she was not informed about the results of the investigation. The criminal case was reopened again on 16 November 2011, following the author's complaint to the Prosecutor General's Office about the ineffective investigation. During the course of the investigation, a second forensic medical examination was conducted.[1] The author claims that, even though the results of the examination were ready in May 2012, her counsel could see the report only in August 2012. According to the results of the second forensic examination, the author's son died of heart failure. The author disagrees with such a finding because her son never had any heart

[1] The author provides a copy of the forensic medical examinations dated 15 December 2011 and 30 April 2012.

problems. She also claims that her son's blood test results were missing and it could not be established whose blood was on her son's clothing. The police failed to explain how the results of the blood test had disappeared. On 25 July 2012, the case was closed for lack of corpus delicti. On 27 July 2012, the author appealed the decision to the General Prosecutor's Office, but her appeal was dismissed. On the same day, the author appealed to the Ismoil Somoni District Court, which has yet to rule on the appeal. The author's complaint has never been considered by an international or regional instance.

2.7 The author emphasizes that, before her son was apprehended by the police, he did not have a medical history or bodily injuries. When the vehicle arrived at the police station, however, his body was covered with bruises and he died soon afterwards. This fact, along with the method of transportation, separated from his friends, shows the police's involvement in his death. The author submits that the injuries found on her son's body cause her to believe that he was tortured and subjected to inhuman and degrading treatment, which caused his death. The author submits that, according to the conclusion of the Committee in the case of *Eshonov v. Uzbekistan*,[2] a death in any type of custody should be regarded as prima facie a summary or arbitrary execution, and there should be a thorough, prompt and impartial investigation to confirm or rebut the presumption, especially when complaints by relatives or other reliable reports suggest unnatural death.

2.8 The author notes that, for more than five years, the State party failed to conduct an impartial and thorough investigation into her son's death. Moreover, the author emphasizes that, during that period, she had very limited access to the case file. She considers that the police authorities are involved in destroying the evidence, such as her son's blood samples.

2.9 The author explains that, for five years, she has been living in a state of constant psychological stress, as no effective investigation of her son's death has ever been conducted and she has received no updates on the different investigations.

The complaint

3.1 The author claims that the State party has violated her son's rights under articles 6 and 7, read alone and in conjunction with article 2 (3) (a), of the Covenant. She also claims a violation of her rights under article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant. The author refers to the Committee's jurisprudence in *Telitsina v. Russian Federation*[3] and its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant in support of her argument that failure to conduct a thorough investigation of her son's death in custody constitutes a violation of article 6, in conjunction with article 2 (3), of the Covenant.

3.2 The author requests that the Committee oblige the State party to conduct an impartial investigation into the facts of her son's death, to compensate her for moral damages and to provide her with adequate rehabilitation.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 17 February 2016, the State party submitted its observations on admissibility and the merits. It submits that the Prosecutor General's Office has assessed the author's complaint concerning her son's death. The investigation revealed that, on 27 June 2009, at 11 p.m. in Dushanbe, the Government's motorcade unit was escorting the President's car and was securing the route assisted by the police. At that moment, the author's son, being drunk and in violation of public order laws, began using obscene language against the law enforcement officers. In order to establish his identity and the reasons for his behaviour, the police officers apprehended him, and placed him inside a police vehicle to take him to the police department of the Ismoil Somoni district. Upon arrival at the police department, it was established that the author's son had died on the way.

[2] CCPR/C/99/D/1225/2003, para. 9.2.

[3] See CCPR/C/80/D/888/1999.

4.2 The forensic medical examination report of 28 June 2009 established that the cause of death was mechanical asphyxiation provoked by the closure of the respiratory tract due to vomiting. Nevertheless, on 6 July 2009, the Prosecutor's Office of Ismoil Somoni district initiated criminal proceedings (on suspicion of causing death by negligence) in order to clarify the circumstances of the case. The case was subsequently suspended on several occasions owing to the failure to identify the persons to be indicted.

4.3 In November 2011, the Prosecutor General's Office resumed the proceedings and appointed a forensic medical examination commission. According to the commission's conclusion of 3 April 2012, the cause of death of the author's son was in fact a life-threatening heart arrhythmia.

4.4 The State party alleges that the author's son suffered from a heart disease during his lifetime. The conditions that exacerbated his life-threatening arrhythmia were: (a) an excessive increase in the quantity of blood in the blood vessels due to drinking large amounts of liquid before death (according to witness testimonies, the author's son, along with two friends, drank more than 30 glasses of beer together that day; (b) physical fatigue (that evening the author's son trained in the gym, then he drank beer and resisted six or seven police officers who were trying to apprehend him in the police car); (c) stress; and (d) the author's son confinement for 5 or 6 minutes in a densely packed and narrow space as he was transported in a special section of the police vehicle to the police department of Ismoil Somoni district.

4.5 According to the conclusion of the forensic medical examination commission, it was not possible to establish precisely which of the above factors caused the death of the author's son. The State party claims that the external injuries detected on his body (scratches) were not related to his death and could have been the result of his resistance to the police officers trying to apprehend him and put him in the police vehicle.

4.6 The State party explains that, during the criminal investigation, numerous witnesses were questioned, including the friends of the author's son who accompanied him to the Department of Internal Affairs of Ismoil Somoni district. They all denied having seen deliberate infliction of physical and mental suffering, i.e. torture, in the police vehicle.

4.7 In light of the above, the State party concludes that the authorities' decision to suspend the criminal investigation into the death of the author son's owing to lack of corpus delicti was a legally sound decision.

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

5.1 On 20 April 2016, the author challenged the State party's arguments and rejected the assertion that her son had been drunk on the day of the incident. It was stated in the forensic medical examination commission's opinion, dated 3 April 2012, that he had drunk 30 glasses of beer with friends. However, the first forensic expert examination of 28 June 2009 concluded that "in the absence of a gas-liquid chromatograph [a device for determining alcohol in the blood and other body fluids], it was not possible to identify the concentration of alcohol in the blood". Therefore, the author contests the credibility of the information provided by the State party that her son was drunk. The forensic examination indicated that during the autopsy there was a smell of alcohol, but it did not provide other information in that regard.

5.2 Furthermore, the State party refers to the testimony of numerous witnesses who denied that the health of the author's son was intentionally harmed. In the course of the investigation, the police officers and the two friends of the author's son were interrogated. On the night of the death of the author's son, the two friends were kept in the police department until the morning. Nobody, including the author, was allowed to see them and talk to them. The author claims that these facts suggest that they were threatened and/or subjected to pressure to deny the ill-treatment of the author's son.

5.3 On the day of the incident, there were numerous other witnesses present at the scene, unknown to the author. The author argues that it was the State party's legal obligation to conduct an effective investigation and to identify, locate and question those witnesses, but it failed to do so.

5.4 The author wrote to several newspapers calling upon all witnesses of the incident to testify. In the morning after the tragedy, police officers went into the courtyard of the house where the incident had occurred and warned all witnesses to remain silent. A young man who was taking photographs of the incident with his mobile telephone was threatened and told not to make them public and he was never seen again. After numerous requests by the author and her counsel, only one witness (H., a woman bystander in the yard) was questioned; she testified that the author's son was neither resisting nor insulting the police officers. However, those statements were disregarded.

5.5 The author reiterates that the State party's allegations that her son had been under the influence of alcohol and in violation of public order laws and had used obscene language against the police officers are re-victimizing and deeply hurtful. Her son, who was raised in the family tradition of patriotism and who was a caring family man and an intellectual, is portrayed by the State party as a hooligan, drunkard and troublemaker. Moreover, not only was the testimony of H. ignored in the investigation, but the investigators also never sought to take into account her son's character, which they could have discovered by interviewing his employer and colleagues, his neighbours, his trainer, other friends and acquaintances. All these sources would have provided positive feedback about the author's son.

5.6 The author also contests the State party's explanation that the external injuries to her son were unrelated to his death. On 28 June 2009, when the body was brought home, it was clear that her son had been subjected to beatings. His body was covered with bruises: bruises on the head and abrasions on the nose, temple and chin. The body was cleaned up by close relatives and a friend of the deceased, who all witnessed numerous bruises on the torso. His entire face was blue and his chin had a cut from a sharp object. A similar cut was visible on his back. His shins and feet showed signs of having been severely beaten. Washed bloodstains were still visible on his clothes. This indicates that the clothes had been washed in order to hide the bloodstains.[4] When the author took possession of her son's clothes after his death, they were humid. The author points out that her son's blood test was destroyed and it was thus impossible to identify whose blood was on his clothes.

5.7 As regards the State party's allegation that, according to a study, the author's son suffered from a heart disease, the author notes that neither information about the date of the study, nor about the persons who carried it out was provided by the State party. The author explains that her son never suffered from a serious heart disease. He was a doctor and a sportsman, and he took good care of his health. For the purpose of the re-examination, the author submitted the results of an examination carried out shortly before her son's death, which indicated that he had been in good health. The author claims that the beating inflicted on her son by the police officers resulted in an arrhythmic attack that caused her son's death.

5.8 In light of the foregoing, the author reiterates that the State party violated her son's rights under articles 6 and 7, read alone and in conjunction with article 2 (3) (a), and her rights under article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant. Over a long period of time, she has been seeking to have those responsible held accountable, which has seriously affected her health. She is devastated by the State party's cynical response and by the distortion of the facts, which have caused her severe emotional distress.

Additional submissions by the parties

6.1 In a note verbale dated 2 December 2016, the State party reiterated its initial observations.

6.2 On 4 May 2017, the author noted that, in fact, the State party had repeated its observations of 17 February 2016. Accordingly, the author refers to her initial submission and her comments of 20 April 2016.

6.3 In a note verbale dated 4 August 2017, the State party again reiterated its initial observations.

[4] Photographs of the clothes are included in the file.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

7.2 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.

7.3 The Committee takes note of the claim that the author has exhausted all available effective domestic remedies. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

7.4 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, her claims raising issues under articles 6 and 7, read alone and in conjunction with article 2 (3) (a), with regard to her son, and under article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant with regard to herself. Accordingly, it declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

8.2 The Committee notes the author's claim that her son died as a result of the ill-treatment and torture inflicted by the police on 27 June 2009. The Committee also notes that two forensic medical examinations were performed. The first one indicated that the cause of death was mechanical asphyxiation provoked by the closure of the respiratory tract due to vomiting, while the second one indicated that the cause of death was a life-threatening heart arrhythmia. The Committee notes that the State party denies any allegations of torture, while providing two alternative explanations of the circumstances of the death of the author's son and claiming that he suffered from a heart disease during his lifetime. The Committee further notes that the State party does not contest the presence of external bodily injuries and accepts that they could have been the result of his resistance to the police officers, yet it claims that these "scratches" were unrelated to his death. However, the Committee observes that the State party does not support its position with proper documentary evidence. The Committee observes that the State party failed to furnish it with any results of the investigation into the death of the author's son. For example, the State party claims to have questioned numerous witnesses, but has not provided the results of the questioning. It also remains unclear to the Committee whether the State party's authorities questioned the author and the relatives and friend who witnessed her son's body bearing multiple signs of severe ill-treatment and torture following his death. The Committee also notes that the State party accepts the fact that the author's son was put forcefully into the police vehicle by six or seven police officers. The State party does not contest the author's allegations that an eyewitness had testified in vain that the author's son had not resisted the police and had not insulted police officers while being apprehended.

8.3 The Committee notes the author's claim that the ill-treatment and torture of her son while he was being apprehended and transported in the special police vehicle led to the arbitrary deprivation of her son's life, contrary to the principles enunciated by the Committee in *Eshonov v. Uzbekistan*. The Committee recalls its jurisprudence, according to which States parties, by arresting and detaining individuals, take responsibility to care for their life,[5] and that criminal investigation and subsequent prosecution are necessary remedies for violations of human rights, such as those protected by article 6 of the

[5] *Lantsova v. Russian Federation* (CCPR/C/74/D/763/1997), para. 9.2; *Boboev v. Tajikistan* (CCPR/C/120/D/2173/2012), para. 9.3; and the Committee's general comment No. 36 (2018) on the right to life, para. 29.

Covenant.[6] The Committee also recalls its general comment No. 31, in which it stated that, where investigations revealed violations of certain Covenant rights, such as those protected under articles 6 and 7, States parties must ensure that those responsible were brought to justice. Although the obligation to bring to justice those responsible for a violation of articles 6 and 7 is an obligation of means, not of result,[7] States parties have a duty to investigate, in good faith and in a prompt and thorough manner, all allegations of serious violations of the Covenant that are made against them and their authorities.

8.4 The Committee further recalls that the burden of proof concerning factual questions cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information.[8] In that regard, the Committee notes, in particular, the author's claim, which remained uncontested by the State party, that her son's blood test was destroyed by the police, which made it impossible to identify the blood on his clothes. It also notes the author's uncontested statement that she was given limited access to the case files of the investigation and no access to the documents concluding that her son had suffered from heart disease.[9] The Committee notes, in this regard, that, on the contrary, the author submitted for re-examination the results of her son's medical examination carried out shortly before his death, which indicated that he had been in good health.

8.5 The Committee concludes that, in the light of the State party's inability to rely on an adequate and conclusive investigation to rebut the author's allegations that her son died as a result of the torture he suffered while in custody, and in the absence of any further information of pertinence, the facts as submitted reveal a violation by the State party of articles 6 (1) and 7 of the Covenant with regard to the rights of the author's son.

8.6 As regards the author's claims under article 2 (3), read in conjunction with articles 6 (1) and 7, of the Covenant that the State party failed in its obligation to properly investigate her son's death and her own claims under article 7, read alone and in conjunction with article 2 (3), the Committee recalls its consistent jurisprudence that criminal investigation and consequential prosecution are necessary remedies for violations of human rights, such as those protected by articles 6 (1) and 7 of the Covenant.[10] The Committee notes that the investigation into the allegations of torture and the subsequent death of the author's son cannot be seen as having been carried out promptly and effectively, and that it was suspended several times.[11] The Committee also notes the author's uncontested claim that she was provided with very little information regarding the investigation into the torture and subsequent death of her son and that she was not provided with the documents concluding that her son had suffered from a heart decease. The Committee recalls that, when a case file is inaccessible to the victim's close relatives, the investigation itself cannot be regarded as an effective one, capable of leading to the identification and punishment of

[6] *Sathasivam and Saraswathi v. Sri Lanka* (CCPR/C/93/D/1436/2005), para. 6.4; *Umetaliev and Tashtanbekova v. Kyrgyzstan* (CCPR/C/94/D/1275/2004), para. 9.2; and *Boboev v. Tajikistan*, para. 9.3.

[7] *Prutina et al. v. Bosnia and Herzegovina* (CCPR/C/107/D/1917/2009, 1918/2009, 1925/2009 and 1953/2010), para. 9.5; and *Boboev v. Tajikistan*, para. 9.3.

[8] Communications No. 30/1978, *Lewenhoff and de Bleier v. Uruguay*, Views adopted on 29 March 1982, para. 13.3; and No. 84/1981, *Dermit v. Uruguay*, Views adopted on 21 October 1982, para. 9.6; and *Boboev v. Tajikistan*, para. 9.4.

[9] The Committee recalls the provisions of the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), according to which "the participation of the family members or other close relatives of a deceased or disappeared person is an important element of an effective investigation" and State parties "must enable all close relatives to participate effectively in the investigation, though without compromising its integrity" (para. 35).

[10] See the Committee's general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14; and its general comment No. 31, para. 18; and *Boboev v. Tajikistan*, para. 9.6.

[11] In *Eshonov v. Uzbekistan*, the Committee also noted the necessity of pursuing investigations through an independent commission of inquiry or similar procedure in cases of allegations of torture, if established investigative procedures were inadequate (para. 9.6).

those responsible for the events in question.[12] Noting the failure of the State party to explain the necessity of keeping information from the author and the fact that no practical outcomes of the investigation are known, especially given the duration of the investigation, the Committee concludes that the State party has not justified its refusal to provide relevant information to the author. In the light of those circumstances, the Committee concludes that the State party failed to launch a prompt, impartial and effective investigation into the circumstances of the death of the author's son and her allegations of torture and ill-treatment. The Committee thus considers that the State party has not provided an effective remedy for the violations of the rights of the author's son under articles 6 (1) and 7, read alone and in conjunction with article 2 (3) (a), of the Covenant.

8.7 The Committee observes that, although at the material time of submission of the communication more than five years had elapsed since the death of the author's son, the State party's authorities have not indicted, prosecuted or brought anyone to justice in connection with this death in custody, which occurred in highly suspicious circumstances. The Committee understands the continued anguish and mental stress caused to the author – the mother of the deceased – especially given that her last complaint to the Ismoil Somoni District Court concerning the closure of the investigation remains unanswered. In its view, that amounts to inhuman treatment of the author, in violation of article 7, read alone and in conjunction with article 2 (3), of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the rights of the author's son under articles 6 (1) and 7, read alone and in conjunction with article 2 (3) (a), and of the author's rights under article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to: (a) conduct a prompt, effective, thorough, independent, impartial and transparent investigation into the torture and death of the author's son, and to prosecute and punish those responsible; (b) keep the author informed at all times about the progress of the investigation; and (c) provide the author with adequate compensation for the violations of her son's rights and her rights, and with adequate rehabilitation measures. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

[12] European Court of Human Rights, *Oğur v. Turkey* (application No. 21594/93), judgment of 20 May 1999, paras. 92–93; *Boboev v. Tajikistan*, para. 9.6; and general comment No. 36, para. 28.