



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. 2400/2014*, **

<i>Communication submitted by:</i>	Kochkonbay Bekbolot Uulu (represented by counsel, Sardar Bagishbekov)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	18 December 2012 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 28 May 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	29 October 2020
<i>Subject matter:</i>	Torture; arbitrary detention
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Torture; lack of effective investigation; arbitrary detention
<i>Articles of the Covenant:</i>	7, read alone and in conjunction with 2 (3) (a), 9 (1) and 14 (3) (g)
<i>Article of the Optional Protocol:</i>	2

1. The author of the communication is Kochkonbay Bekbolot Uulu, a national of Kyrgyzstan born in 1990. He claims that the State party has violated his rights under article 7, read alone and in conjunction with article 2 (3) (a), and articles 9 (1) and 14 (3) (g) of the Covenant. The Optional Protocol entered into force for the State party on 7 January 1995. The author is represented by counsel.

Facts as submitted by the author

2.1 On 4 December 2009, at 5.30 p.m., the author was arrested at his house by three police officers. He was handcuffed and taken to the Novopavlovka police station in Sokuluk district. At the police station, the author was taken to one of the rooms on the second floor and told

* Adopted by the Committee at its 130th session (12 October–6 November 2020).

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



to confess to stealing a computer from the factory where he was working as a loader at the time. He was not allowed to contact his family or lawyer. After he refused to confess, he was subjected to beatings. One of the officers put on boxing gloves and started punching him on the head. Another officer punched the author in the kidneys, chest and stomach, while the third officer beat the soles of his feet with a baton. The officers also threatened to take him to a nearby canal and pour water over him until he confessed or to plant drugs in his pockets. At one point, they brought into the room an acquaintance of the author, D., who they said would testify that the author had assaulted him earlier so that there would be grounds to arrest the author on assault charges.

2.2 At approximately 10 p.m., the author was taken by the officers to the Sokuluk district police department. When they arrived at the police department, the author was spotted by his friend E., a police officer. E. told the other police officers that he knew the author and asked them to release him. After this, the author was released without even entering the police department and immediately taken home by E.

2.3 Upon returning home, the author experienced severe headaches and nausea. On 5 December 2009, he was taken to a hospital in Bishkek by his mother where he was admitted with the following diagnoses: craniocerebral trauma, concussion and bruising of the face, head, limbs and soles of the feet.¹ The author spent 10 days at the hospital receiving treatment for his injuries. Due to persistent symptoms, he subsequently underwent treatment for 12 more days in the neurology department of the same hospital and 10 days in the cardiology department of another hospital.

2.4 On 7 December 2009, the author submitted a complaint against the police officers to the Sokuluk district prosecutor's office. At the outset of the inquiry procedure, the assistant district prosecutor questioned the author, his mother and brother, and the three police officers against whom the author had submitted the complaint. No other witnesses, including those who were working at the Novopavlovka police station and the Sokuluk district police department on 4 December 2009, were questioned by the prosecutor's office.

2.5 On 16 December 2009, the Sokuluk district assistant prosecutor refused to open a criminal investigation into the author's allegations.² On 24 December 2009, the Sokuluk district prosecutor quashed the refusal and ordered an additional inquiry.

2.6 On 15 January 2010, the author was ordered to undergo a forensic medical examination. The examination questioned the accuracy of the diagnosis of concussion and identified only one bruise on the sole of the author's foot, but indicated that it was not consistent with the author's version of events. On 16 January 2010, the Sokuluk district assistant prosecutor raised doubts concerning the accuracy of the examination. Nevertheless, he refused to open a criminal investigation into the author's allegations for lack of corpus delicti. However, he did order a second examination of the author by a medical commission.

2.7 On 18 January 2010, a second examination was conducted by a medical commission based only on the results of the first examination and the diagnoses received by the author during his hospital treatments in December 2009. According to the results of the examination, the author was experiencing some soft tissue pain in his forearm and back. However, it was concluded that the bruising on the sole of his foot had not been caused on 4 December 2009. With regard to the author's concussion, the commission stated that it could not confirm the diagnosis by considering only the available data. It concluded that there were no traces of injuries on the author's head, body or limbs, although it noted that it was up to the judicial and investigative authorities to determine the facts concerning the alleged beatings when there were no visible injuries.

2.8 On 28 January 2010, after the author's appeal, the Sokuluk district prosecutor quashed the refusal of the Sokuluk district assistant prosecutor of 16 January 2010 and ordered an additional inquiry.

¹ The author provides copies of all medical documents, which clearly indicate the above-mentioned injuries.

² No further details provided.

2.9 On 3 March 2010, the Sokuluk district prosecutor's office again refused to open a criminal investigation into the author's allegations of torture. According to the decision, the author's allegations were not supported by the results of the forensic medical examination. The decision also indicated that the police officers had denied beating the author and had testified that they had taken him to the police station for a "prophylactic conversation",³ after which he had been released. On 14 April 2010, the author appealed the refusal to the Sokuluk district prosecutor. On 19 April 2010, the Sokuluk district deputy prosecutor rejected the author's appeal.

2.10 On 21 May 2010, the author appealed the decision to the Sokuluk district court. He argued that his arrest was clearly arbitrary and, since he had submitted a complaint detailing the psychological and physical pressure to which he had been subjected, as well as the names of the police officers involved, the prosecutor's office was required by law to open a criminal investigation and to order an independent forensic medical examination, which would provide the author with an opportunity to question medical experts on the results of their findings.

2.11 On 25 May 2010, the Sokuluk district court quashed the refusal by the prosecutor's office and ruled that an investigation could not be refused solely on the basis of a victim's lack of physical injuries. On 28 July 2010, the Chuy provincial court upheld the decision of the Sokuluk district court and ordered an additional inquiry.

2.12 On 28 August 2010, the Sokuluk district assistant prosecutor again refused to open a criminal investigation into the author's allegations based on the same conclusion as the previous inquiry. On 15 October 2010, the author appealed the refusal to the Sokuluk district court, arguing that the prosecutor's office had not conducted an additional inquiry as directed by the courts.

2.13 On 28 October 2010, the Sokuluk district court quashed the refusal by the prosecutor's office and ordered an additional inquiry.

2.14 On 24 December 2010, the Sokuluk district assistant prosecutor refused, for the fifth time, to open a criminal investigation based on the same grounds.⁴

2.15 After the author submitted a complaint to the Prosecutor General of Kyrgyzstan, requesting his personal oversight of the author's complaints, on 11 January 2011, the Chuy provincial prosecutor's office quashed the refusal of the Sokuluk district assistant prosecutor and ordered him to conduct an additional inquiry. On 24 January 2011, the Sokuluk district assistant prosecutor again refused to open a criminal investigation.

2.16 On 31 March 2011, the chief prosecutor of the Prosecutor General's Office quashed the refusal of the Sokuluk district assistant prosecutor, noting that the latter had not conducted an additional inquiry and had instead copied and attached to the case file his previous refusal dated 24 December 2010. According to the chief prosecutor, while the police officers against whom the complaint was submitted had testified that they had moved the author from the Novopavlovka police station to the Sokuluk district police department at 6.45 p.m., another police officer, E., had testified that, at 9 p.m., the author had still been at the Novopavlovka police station. The chief prosecutor also noted that neither D., the author's acquaintance who was present at the Novopavlovka police station when the author was taken there, nor other witnesses who had been present at the Novopavlovka police station and the Sokuluk district police department on 4 December 2009 and who might have seen the author had been questioned by the prosecutor's office.

2.17 On 8 April 2011, after conducting an additional inquiry,⁵ the Chuy provincial prosecutor's office refused to open a criminal investigation for lack of *corpus delicti*.

2.18 The author submits that he has exhausted all available domestic remedies.

³ Aimed at preventing future crimes.

⁴ From the documents submitted, it appears that the prosecutor's office additionally questioned only an on-duty officer at the Novopavlovka police station, who testified that the author had been taken away from the police station at 6.45 p.m.

⁵ The author did not provide a copy of the refusal.

Complaint

3.1 The author claims that he has suffered torture and ill-treatment at the hands of the police and that the State party has failed to effectively investigate his complaints, in violation of article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant.

3.2 The author alleges that his arbitrary arrest and detention for more than five hours without access to a lawyer or family member violates his rights under article 9 (1) of the Covenant. The Code of Criminal Procedure of Kyrgyzstan requires the police to make a formal record of an arrest for anyone who is detained for longer than three hours, which was not done in the present case.

3.3 Finally, the author claims a violation of his rights under article 14 (3) (g) of the Covenant given that he was forced to confess under torture.

State party's observations on the merits

4. In a note verbale dated 27 December 2014, the State party submitted its observations on the merits of the communication. According to the State party, the Sokuluk district prosecutor's office has, on numerous occasions, refused to open a criminal investigation into the author's allegations of torture. The State party notes that the refusals dated 3 March and 28 August 2010 by the Sokuluk district assistant prosecutor were quashed by the domestic courts and assessed according to the appropriate legal standards.

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

5. On 16 March 2015, the author submitted his comments on the State party's observations. He notes that, in its observations, the State party has not addressed any of his claims. He submits that all inquiries conducted by the Sokuluk district prosecutor's office were extremely superficial and biased. He notes that, while conducting an inquiry into his claims, the prosecutor's office never questioned the doctors who treated him for the injuries he sustained in December 2009 or his neighbours, who could have provided information as to whether he had any injuries before his arrest. The author also notes that the prosecutor's office did not examine the closed-circuit television footage from the Sokuluk district police department, which would have shown the details and timeline of the author's detention. The author argues that, apart from his claims of torture, the prosecutor's office was required, under articles 304 and 324 of the Criminal Code of Kyrgyzstan,⁶ to open a criminal investigation into his arrest because the police did not have any legal grounds to detain him and his detention took place outside of any formal investigation, as evidenced by the lack of procedural documents.

Issues and proceedings before the Committee*Consideration of admissibility*

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

6.2 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.

6.3 The Committee notes the author's claim that he has exhausted all available domestic legal remedies. In the absence of any objection by the State party in that connection, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 The Committee notes the author's claim under article 14 (3) (g) of the Covenant. The Committee recalls that, in accordance with the provisions of paragraph 3 of its general comment No. 32 (2007), paragraph 3 of article 14 contains procedural guarantees available

⁶ Articles 304 and 324 pertain, respectively, to the abuse of official power and unlawful detention.

only to persons charged with a criminal offence. The Committee notes that, in the case at hand, the author was never charged with any crime. Therefore, the Committee considers that this claim is incompatible with the provisions of the Covenant and declares it inadmissible under article 3 of the Optional Protocol.

6.5 In the Committee's view, the author has sufficiently substantiated his claims under article 7, read alone and in conjunction with article 2 (3) (a), and article 9 (1) of the Covenant for the purposes of admissibility. It therefore declares them admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

7.2 The Committee notes the author's claim that, on 4 December 2009 at 5.30 p.m., he was arrested at his house by three police officers, handcuffed and taken to the Novopavlovka police station in Sokuluk district. At the police station, he was placed in an office on the second floor and was urged to confess to stealing a computer from the factory where he was working as a loader at the time. He was not allowed to contact his family or a lawyer. He refused to confess and was subjected to beatings. The author alleges that one of the officers put on boxing gloves and started punching him in the head. Another officer punched him in the kidneys, chest and stomach, while the third officer beat the soles of his feet with a baton. The author also claims that the officers threatened to take him to a nearby canal and pour water over him until he confessed or to plant drugs in his pockets. At approximately 10 p.m., the officers took him to the Sokuluk district police department, where he was recognized by a friend, also a police officer, who asked them to release him. As a result, the author was released and taken home by his friend.

7.3 The Committee observes that the author has submitted a detailed account of the torture to which he claims he was subjected, with supporting evidence of the medical treatment that he underwent shortly after the incident. According to the medical documents provided by the author, he suffered a craniocerebral trauma, concussion and bruising on his face, head, limbs and soles of his feet. As a result, the author spent 10 days at the hospital treating his injuries. Due to persistent symptoms, he subsequently underwent treatment for 12 more days in the neurology department of the same hospital and 10 days in the cardiology department of another hospital. The Committee also notes the State party's submission that the Sokuluk district prosecutor's office refused, on numerous occasions, to open a criminal investigation into the author's allegations of torture and that the refusals dated 3 March and 28 August 2010 were quashed by the domestic courts and assessed according to the appropriate legal standards.

7.4 The Committee recalls that a State party is responsible for the security of any person it holds in detention and, when an individual in detention shows signs of injury, it is incumbent on the State party to produce evidence showing that it is not responsible for that injury.⁷ The Committee has held on several occasions that the burden of proof in such cases cannot rest with the author of a communication alone, especially considering that frequently only the State party has access to the relevant information.⁸ In the absence of any other arguments by the State party to counter the claims made by the author, the Committee decides that due weight must be given to the author's detailed allegations of torture.

7.5 With regard to the State party's obligation to properly investigate the author's claims of torture, the Committee recalls its jurisprudence according to which criminal investigation and consequential prosecution are necessary remedies for violations of human rights, such as

⁷ For example, *Eshonov v. Uzbekistan* (CCPR/C/99/D/1225/2003), para. 9.8; *Zheikov v. Russian Federation* (CCPR/C/86/D/889/1999), para. 7.2; and *Siragev v. Uzbekistan* (CCPR/C/85/D/907/2000), para. 6.2.

⁸ For example, *Mukong v. Cameroon* (CCPR/C/51/D/458/1991), para. 9.2; and Human Rights Committee, *Bleier Lewenhoff and Valino de Bleier v. Uruguay*, communication No. 30/1978, para. 13.3.

those protected by article 7 of the Covenant.⁹ The Committee also recalls that, once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially so as to make the remedy effective and, if confirmed, have those responsible prosecuted and punished.¹⁰

7.6 The Committee notes that, in the present case, the initial complaint about the torture suffered by the author was submitted to the Sokuluk district prosecutor's office on 7 December 2009. The Committee observes that the first refusal to open a criminal investigation into the author's allegations was issued by the Sokuluk district assistant prosecutor on 17 December 2009, before the author was even examined for his injuries, based only on the testimonies of the author, his mother and brother and the three police officers against whom the author had submitted a complaint, who denied any use of force. The Committee also observes that, following the author's successive appeals, there were at least five more inquiries held by the Sokuluk district prosecutor's office into the author's allegations of torture, each ending with a refusal to open a criminal investigation and its being quashed and returned for additional inquiry by higher ranking prosecutors or by the courts. In this regard, the Committee notes the author's argument that, despite repeated orders for additional inquiries, the prosecutor's office never questioned the doctors who treated him for the injuries sustained during the arrest or his neighbours, who could have provided information as to whether he had any injuries before the arrest, or examined the closed-circuit television footage from the Sokuluk district police department, which would have shown the details and exact timeline of his detention. In these circumstances, the Committee considers that, in spite of successive inquiries held by the Sokuluk district prosecutor, the State party has not provided any specific information indicating that any effective investigation was carried out into the author's allegations of torture. In these circumstances, the Committee concludes that the facts before it disclose a violation of the author's rights under article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant.

7.7 Furthermore, the Committee notes the author's claim under article 9 (1) of the Covenant to the effect that he was subjected to arbitrary arrest and detention for more than five hours without access to a lawyer or family member. According to the author, the Code of Criminal Procedure requires the police to make a formal record of an arrest for anyone who is detained for more than three hours, which was not done in his case. The Committee recalls that, in accordance with its general comment No. 35 (2014), procedures for carrying out legally authorized deprivation of liberty should be established by law and States parties should ensure compliance with their legally prescribed procedures.¹¹ It also requires compliance with domestic rules providing important safeguards for detained persons, such as making a record of an arrest and permitting access to counsel.¹² In the absence of the State party's explanation in this regard, the Committee concludes that the facts as submitted reveal a violation of the author's rights under article 9 (1) of the Covenant.

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

9. 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 conduct a prompt and impartial investigation into the author's allegations of torture and, if confirmed, have those responsible prosecuted and adequately punished and to provide the author with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

⁹ Human Rights Committee, general comment No. 20 (1992), para. 14, and general comment No. 31 (2004), para. 18.

¹⁰ General comment No. 20 (1992), para. 14; and, for example, *Khalmamatov v. Kyrgyzstan* (CCPR/C/128/D/2384/2014), para. 6.4.

¹¹ General comment No. 35 (2014), para. 23.

¹² *Ibid.*

10. 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 and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable 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 Committee's 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.
