



International Covenant on Civil and Political Rights

Distr.: General
11 March 2021

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2451/2014*, **

<i>Communication submitted by:</i>	V.I. (represented by his mother)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	4 November 2009 (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 18 August 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	6 November 2020
<i>Subject matter:</i>	Torture; arbitrary detention; unfair trial
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture; arbitrary detention; forced confession; presumption of innocence; lack of legal assistance
<i>Articles of the Covenant:</i>	7, 9 (2) and 14 (1), (2) and (3) (b) and (g)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

* 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: Tania María Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, Bamariam Koita, 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.



1. The author is V.I., a national of Kyrgyzstan, born in 1972. He claims that the State party has violated his rights under articles 7, 9 (2) and 14 (1), (2), and (3) (b) and (g) of the Covenant. The Optional Protocol entered into force for the State party on 7 January 1995. The author is represented by his mother.

Facts as submitted by the author

2.1 On 20 December 2006, several police officers entered a house belonging to the author's brother. The officers violently beat the author on the face with a pistol grip and then took him outside without his coat and shoes. He was pushed to the ground and beaten again. The author was then forced into a patrol car and driven away.

2.2 The author was brought to the Zhaiyl district police station where he was offered vodka, heroin and cannabis in exchange for his confession to a crime. After the author refused, he was beaten with police batons and threatened with sexual violence. Two hours after his arrest, the author found out that his acquaintance Z. had named him as an accomplice in the raping and killing of a schoolgirl on 10 September 2006.

2.3 The author submits that later on the same day, he was taken to a local hospital for a medical examination and to submit his blood and saliva samples. During the medical examination, one of the police officers told the doctor that the author was "that second guy who raped the little girl". Notwithstanding the author's numerous injuries, the doctor issued a medical certificate stating that the author was in good health.

2.4 Immediately after the medical examination, the author was taken to the police station in Alekseevka village where he was subjected to additional ill-treatment. For the purposes of intimidation, the police officers took off his pants, forced him to get down on his knees as if preparing to rape him and took photos of him, saying that they would show them to his cellmates in jail. The author was also threatened that if he did not sign a confession, the police would plant drugs in his brother's house and incite the local Kyrgyz population to beat up his elderly mother. After a day of physical and psychological torture, the author agreed to sign a confession. He was appointed a lawyer; however, he was forced to limit what he told the lawyer, as instructed by the investigator, and he was not allowed to have a confidential meeting with him. Immediately after signing the confession, the author was told that he would be brought to the crime scene for a re-enactment of the crime as an investigative experiment.

2.5 Before going to the crime scene, however, the author was taken to another office and the same three police officers who had tortured him earlier again beat his feet with police batons and instructed him what to say and do. Despite it being late at night and very cold, he was taken to the crime scene without his coat and shoes. According to the author, there is a video of him from that night, which was used as evidence and in which one can clearly see injuries to his face and hands. At the crime scene, when the investigative experiment ended, he was attacked by the victim's father and other relatives of the victim who also happened to be at the crime scene. While this was happening, the police simply watched, without interfering. Afterwards, the author was brought back to the Zhaiyl district police station and again subjected to beatings by several police officers. He was then left handcuffed to a pipe until 7 a.m. According to the author, the beatings continued on 6 January 2007 at the temporary detention facility in Belovodskoe, and again on 10 January 2007, when he was taken to the Zhaiyl district police station, where the police beat him and tried to get him to confess to another unsolved murder in the area of Sosnovskiy povorot.

2.6 The author submits that his appointed lawyer was not present during any of the interrogations or other investigative activities; however, the lawyer's signature appeared in all procedural documents throughout the investigation. Meanwhile, on 30 December 2006, the author's mother hired another lawyer, with whom the author was able to meet only on 3 January 2007.

2.7 On 12 January 2007, the author's new lawyer submitted a complaint to the Zhaiyl district prosecutor's office concerning the torture the author had suffered. On 13 January 2007, the author underwent a medical examination, which revealed that he had sustained injuries to his shoulders and face by a blunt, hard object. However, the examination could not determine when exactly the injuries had been inflicted. On 22 January 2007, a Zhaiyl

district assistant prosecutor refused to open a criminal investigation against the police, citing a lack of evidence against the officers, except for the author's "subjective testimony".

2.8 On 20 February 2007, the author underwent a second medical examination, which concluded that his injuries could have been caused in the period from 3 to 6 January 2007. On 18 June 2008, an investigator of the Zhaiyl district prosecutor's office again refused to open a criminal investigation into the author's complaint. In his decision, the investigator stated that it was impossible to determine who had caused the author's injuries and that they could have been caused by the author's cellmates. On an unspecified date, the author appealed the refusal by the investigator to open a criminal investigation to the Office of the Prosecutor General. However, his appeal was denied.

2.9 On 30 July 2007, the Zhaiyl district court found the author guilty and sentenced him to life imprisonment. The court ignored the allegations of torture made by the author and his co-defendant and pointed out that they had both signed confessions in the presence of a lawyer. As for the author's alibi, the court held that it should be viewed critically because it was supported only by his friends, who were biased. The author's co-defendant testified that he had confessed because he had been tortured and injected with drugs. The verdict was based on the initial confessions of the author and his co-defendant and on the results of a forensic biological examination of the semen found at the crime scene. According to the author, the forensic examination used by the police was outdated and had a 60 to 65 per cent margin of error. The results of the examination did not point to him as the perpetrator but merely concluded that he could not be excluded as the source of the semen. In 2009, the author's family wanted to do a DNA test of the biological samples obtained from the crime scene, but when they requested them from the State forensic laboratory, they were told that all samples had been returned to the investigator and later destroyed.

2.10 On an unspecified date, the author appealed the decision of 30 July 2007 of the Zhaiyl district court. On 25 September 2007, the Chuy regional court upheld the trial court's decision.

2.11 On an unspecified date, the author sought a supervisory review by the Supreme Court. On 18 March 2008, the Supreme Court dismissed his complaint and upheld the decision of the Chuy regional court. The author explains that he has thus exhausted all available domestic remedies.

Complaint

3.1 The author claims that he was subjected to torture for several weeks following his arrest on 20 December 2006, in violation of article 7 of the Covenant.

3.2 He claims that he was not informed of the reasons for his arrest, nor was his family informed of his whereabouts immediately after his arrest, in violation of article 9 (2) of the Covenant.

3.3 The author claims that he was denied a fair trial because the courts: arbitrarily denied motions submitted by the defence; constantly interrupted him and his lawyer while allowing the prosecutor to speak without restrictions; ignored his claims of a forced confession and a lack of access to a lawyer during the pretrial investigation; and examined the evidence in an erroneous manner, in violation of article 14 (1) of the Covenant.

3.4 He further claims that the State party has violated his rights under article 14 (2) of the Covenant because he was labelled as a killer and rapist by numerous media outlets long before he was even tried. The author submits that the town of Kara-Balta is very small and after the killing of 10 September 2007, everyone in town was scared. Some parents even prohibited their children from attending school until the killer was found. He notes that on 14 September 2007, a senior national police official gave an interview in which he promised that the crime would be solved by 1 December 2007, and if it was not, the leaders of the Zhaiyl district police department would lose their jobs. On 27 November 2007, the author's co-defendant was arrested, and several newspapers published articles naming him as the perpetrator. He was taken to the crime scene to recreate the crime for investigation purposes, and it was filmed and later aired by a local television station in order to calm the public and show that the killer had been caught. However, when the results of the forensic biological examination of his semen came back, the co-defendant was excluded as the source of the

semen found at the crime scene. According to the author, it was then that the police started to look for an accomplice. Owing to the fact that the author has a prior conviction and that the co-defendant was temporarily staying at his house during the time period in which the crime was committed, the author became a target. The author submits that because the authorities were investigating the crime under a deadline that had been made known to the public, they did not have enough time to conduct a thorough investigation. As a result, once the charges were brought, the author and his co-defendant were presumed guilty and had to be convicted.

3.5 The author further claims that he had no legal assistance for a period of 15 days, contrary to article 14 (3) (b) of the Covenant. His appointed lawyer provided no legal assistance and was present only on 20 December 2006, although his signatures confirmed his participation during the whole period of investigation.

3.6 Finally, the author claims a violation of his rights under article 14 (3) (g) of the Covenant, given that he was forced under torture to confess his guilt and the court used his forced confession as the main piece of evidence against him.

State party's observations on admissibility

4. In a note verbale dated 20 February 2015, the State party submitted its observations on the admissibility of the communication. It claims that on 16 January 2014, the Office of the Prosecutor General of Kyrgyzstan reopened the investigation owing to new circumstances in the author's case. As part of the investigation, an international request was sent to the law enforcement authorities in the Russian Federation to conduct certain investigative activities on their territory. At the time of the submission of the State party's observations, no information had been received from the authorities in the Russian Federation. The State party notes that since the investigation of new circumstances in the author's case remains open, the domestic remedies cannot be considered to be exhausted and the communication should therefore be declared inadmissible.

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

5.1 On 4 February, 16 March and 11 May 2017, the author submitted comments on the State party's observations. He notes that in 2015, the authorities of the Russian Federation reported on the requested investigative activities; however, that information has not contributed to progress in the investigation.

5.2 The author submits that in 2015, new witnesses were questioned by the authorities of Kyrgyzstan. According to witness Ya., the perpetrator was not an ethnic Russian, whereas the author and his co-defendant are. Other witnesses confirmed the author's alibi to the effect that he was at a friend's birthday in a different town one hour away when the crime is believed to have been committed. Meanwhile, the exact time of the victim's death has not been established by the forensic examination.

5.3 According to the author, since 2010, the investigation of new circumstances has resulted in his case being reopened and closed again on several occasions. He notes that the investigation is currently being conducted by the main investigation department of the Ministry of Internal Affairs, which has no interest in another judicial review of the author's case because it would reveal that the case had been fabricated by the police. In the light of the above, the author reiterates that all effective domestic remedies have been exhausted. He also notes that since 11 March 2017, he has been on a hunger strike demanding the Office of the Prosecutor General to send his case to the Supreme Court for a hearing based on newly discovered evidence, but to no avail.

5.4 The author also submits a letter signed by the Deputy Ombudsman of Kyrgyzstan, who supports the admissibility of the author's claims and considers that all available and effective domestic remedies have already been exhausted. According to the letter, there are sufficient grounds for a judicial review of the author's case; however, for eight years the Office of the Prosecutor General kept reopening and closing the investigation without sending the case to the Supreme Court.

State party's observations on the merits

6.1 In a note verbale dated 25 July 2017, the State party submitted its observations on the merits. It rejects the author's arguments and notes that, on the basis of the author's numerous complaints, the Office of the Prosecutor General has conducted several investigations of new circumstances. However, none of them confirmed the alleged facts.

6.2 The State party further notes that the author was found guilty, along with his co-defendant, of raping and killing a schoolgirl on 10 September 2006 in the town of Kara-Balta. After the killing, the perpetrators took the victim's golden earrings and later sold them. Both the author and his co-defendant were sentenced to life imprisonment. According to the State party, in his numerous complaints, the author denied committing the crime and testified that at the time when the crime was believed to have been committed, he was in Bishkek attending his friend K.'s birthday party. During the trial, K. and his partner both testified that the author was at the party starting at 5 p.m. However, since they could not provide any evidence to prove that, their testimonies were viewed critically by the trial court.

6.3 With regards to the author's claim that his conviction was based exclusively on his confession, which was obtained under torture, the State party submits that in addition to the confession, his guilt has also been proven by the confession of his co-defendant, the testimony of the gold dealer who later bought the victim's earrings from the defendants and the results of the forensic biological examination. The State party notes that the Zhaiyl district prosecutor's office has conducted an inquiry into the author's allegations of torture but refused to open a criminal investigation.

6.4 The State party further notes that on 22 December 2009, the Office of the Prosecutor General opened an investigation based on new circumstances. The investigators could not examine cellular tower logs, as requested by the author, to determine his exact location on the day of the crime, because such logs are kept only for two years. It was also determined that all evidence pertaining to the case had been destroyed on 20 March 2009, in accordance with article 88 (3) of the Criminal Procedure Code. Since the investigation did not identify any new evidence that could have corroborated the author's claims, the Office of the Prosecutor General closed its investigation on 15 March 2010.

6.5 On 18 November 2011, after numerous requests by the author's mother, the Office of the Prosecutor General reopened the investigation on the basis of new circumstances, and it sent the case to the Chuy regional prosecutor's office. However, on 23 June 2012, the Office of the Prosecutor General again closed the investigation, for a lack of new evidence. The author's mother appealed the closure of the investigation to the Pervomayskiy district court in Bishkek, but her appeal was denied on 10 August 2012.

6.6 On 17 December 2013, the author's mother again petitioned the Office of the Prosecutor General to have the investigation reopened on the basis of new circumstances, in the light of the testimony of two new witnesses who pointed to another person as a possible culprit. However, that person's fingerprints and biological examination of saliva and blood did not match the fingerprints and semen samples discovered at the crime scene. In addition, witnesses claimed that the victim's father knew the suspect, while the father himself denied it. In view of the above, the case investigator recommended that the Office of the Prosecutor General close the investigation.

6.7 On 25 February 2015, the Office of the Prosecutor General ordered additional investigations owing to new evidence presented by the author's lawyer in the form of a letter from a local DNA expert who concluded that the traces of semen found at the crime scene could not have come from the author. To verify the DNA expert's conclusion, the prosecutor's office of the city of Bishkek ordered a complex forensic-biological examination, which found the expert's conclusion to be unsubstantiated. On the basis of that conclusion, the investigator recommended that the Office of the Prosecutor General close the case. At the same time, the Ombudsman of Kyrgyzstan submitted a complaint against the case investigator accusing him of a lack of impartiality during the investigation.

6.8 In view of the numerous requests from the author, his mother and the lawyers for permission to access the case file materials, the Office of the Prosecutor General ordered an additional investigation to be undertaken and sent the case to the main investigation

department of the Ministry of Internal Affairs. According to the State party, the investigation was completed on 11 May 2017, and the results were being reviewed by the Office of the Prosecutor General.

6.9 The State party submits that on the basis of the above, one cannot conclude that the authorities are ignoring the author's arguments about his innocence, nor that they have purposefully avoided sending the author's case for a judicial review to the Supreme Court. The State party notes that the author's guilty verdict has been upheld both by the Chuy regional court and the Supreme Court and that it cannot be appealed further, unless new circumstances are discovered. However, before the Supreme Court can hear the case again, the prosecutor's office must investigate any new evidence and agree to send the case for a new judicial hearing.

Additional information from the author

7. On 24 August 2020, the author submitted a copy of the decision by the Supreme Court dated 18 February 2020, rendered on the motion of the author's counsel to reopen the case on the basis of new circumstances. The Supreme Court denied the author's motion, ruling that the claims made by the author could not be considered to be new circumstances, given that the pieces of evidence contained in the case were reliable and confirmed one another.

Issues and proceedings before the Committee

Considerations of admissibility

8.1 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.

8.2 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.

8.3 The Committee takes note of the State party's argument that since there is an ongoing investigation based on new circumstances in the author's case, the domestic remedies cannot be considered exhausted and that therefore, the communication should be declared inadmissible. The Committee also notes the author's argument that since 2010, the investigation based on new circumstances has resulted in his case being reopened and closed on several occasions. The Committee observes that even though all new evidence presented by the author and his lawyers appears to trigger the reopening of the case and investigation by the Office of the Prosecutor General, the State party has not been able to show that there is a reasonable prospect that those numerous investigations would provide an effective remedy in the circumstances of the case since none of them resulted in a judicial hearing by the Supreme Court. In view of those circumstances, the Committee considers that it is not precluded by articles 2 and 5 (2) (b) of the Optional Protocol from examining the communication.

8.4 The Committee notes the author's claim that he was not informed of the reasons for his arrest, nor was his family informed of his whereabouts immediately after his arrest, in violation of article 9 (2) of the Covenant. However, from the information before it, the Committee notes that the author had never raised these claims before the domestic authorities prior to the submission of the present communication. In that respect, the Committee considers that the author has not exhausted all available domestic remedies concerning his claims under article 9 (2) of the Covenant and finds them inadmissible under article 5 (2) (b) of the Optional Protocol.

8.5 Similarly, with respect to the author's claim under article 14 (3) (b) of the Covenant, the Committee finds it inadmissible under article 5 (2) (b) of the Optional Protocol because the claim was not raised before the domestic authorities prior to the submission of the present communication.

8.6 The Committee notes the author's claim that his right to be presumed innocent was violated, since he was labelled as a killer and rapist by numerous media outlets long before

he was even tried, and because the authorities were investigating the crime under a deadline that had been made known to the public, they did not have enough time to conduct a thorough investigation and that as a result, once the charges were brought, he and his co-defendant were presumed guilty and had to be convicted. Based on the material before it, the Committee, however, observes that the author has not shown that the above-mentioned facts influenced the courts and resulted in a violation of his rights under article 14 (2) of the Covenant. The Committee also observes that the claim was not raised during the trial or at any time thereafter, and that as a result, domestic institutions did not have the possibility of reviewing compliance with the Covenant regarding the claim. Accordingly, the Committee considers that this part of the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol.

8.7 The Committee considers the author has sufficiently substantiated the remaining claims under articles 7 and 14 (1) and (3) (g) of the Covenant for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

9.2 The Committee notes the author's claim that on 20 December 2006, several police officers entered a house that belonged to his brother without introducing themselves or providing any official documents, violently beat him on the face with a pistol grip and then took him outside without his coat and shoes. He was pushed to the ground, beaten again, forced into a patrol car and driven away. The author was brought to the Zhaiyl district police station where he was offered vodka, heroin and cannabis in exchange for his confession to a crime. After the author refused, he was beaten with police batons and threatened with sexual violence. According to the author, only two hours after his arrest he found out that his acquaintance Z. had named him as an accomplice in the raping and killing of a schoolgirl on 10 September 2006. Later, the author was taken to the police station in Alekseevka village where he was again subjected to physical violence. After a day of physical and psychological torture, the author confessed guilt. The Committee notes the author's claim that the beatings continued on 6 January 2007 at the temporary detention facility in Belovodskoe and on 10 January 2007, when he was taken to the Zhaiyl district police station, where the police tried to get him to confess to another unresolved murder.

9.3 The Committee further notes that, on 13 January 2007, the author underwent a medical examination, which revealed that he had sustained injuries to his shoulders and face, caused by a blunt hard object. A copy of the report of the examination was provided to the Committee. The Committee also notes that on 20 January 2007, a further examination concluded that his injuries could have occurred in the period from 3 to 6 January 2007. The Committee further notes the State party's submission that the Zhaiyl district prosecutor's office has conducted an inquiry into the author's allegations of torture but refused to open a criminal investigation.

9.4 The Committee observes that, while the State party reports that it conducted inquiries into the author's torture claims, it has not shown that those investigations were conducted thoroughly or effectively. The Committee notes that the State party has not provided any response to deny the author's allegation of torture substantiated by the medical reports. In addition, it has not submitted any information with regard to the author's claim that the video from the crime scene re-enactment, which was shot after his arrest, showed him with visible injuries to his face and arms. Furthermore, it appears from the submissions of both parties and from copies of submitted documents that the Zhaiyl district prosecutor's office did not question anyone except for the author himself and the police officers against whom the author had filed a complaint. In addition, the prosecutor's office did not look into any other evidence before closing its inquiries into the author's allegations.

9.5 The Committee recalls that a State party is responsible for the security of any person it holds in detention and that, when an individual in detention shows signs of injury, it is

incumbent upon the State party to produce evidence showing that it is not responsible.¹ The Committee has held on several occasions that the burden of proof in such cases also cannot rest with the author of a communication alone, especially considering that frequently only the State party has access to the relevant information.² In the absence of any observations by the State party to counter the author's claims, the Committee must give due weight to the author's allegations. Accordingly, the Committee concludes that the facts as submitted before it disclose a violation of the author's rights under article 7 of the Covenant.

9.6 In the light of this conclusion, the Committee considers that the facts as submitted also reveal a violation of the author's rights under article 14 (3) (g) of the Covenant, given that the author's conviction was based on his confessions and the confessions of his co-defendant, which were relied upon by the courts irrespective of the fact that the author later retracted his confessions as having been obtained under torture and that on 10 January 2017, the police tried to obtain his forced confessions in another crime.

9.7 Having concluded that, in the present case, there has been a violation of article 14 (3) (g) of the Covenant, the Committee decides not to examine separately the author's claim under article 14 (1).

10. 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 articles 7 and 14 (3) (g) of the Covenant.

11. 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 to: conduct a prompt and impartial investigation into the author's allegations of torture and, if confirmed, have those responsible prosecuted; take appropriate steps to review the author's conviction; and 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. In this connection, the State party should, inter alia, review its legislation and practice with a view to ensuring that all material evidence, including evidence submitted for forensic examination, is preserved for an adequate period of time, even after a verdict has entered into force, so as to allow for appeals or reviews.

12. 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.

¹ See, for example, *Eshonov and Eshonov v. Uzbekistan* (CCPR/C/99/D/1225/2003), para. 9.8; *Siragev v. Uzbekistan* (CCPR/C/85/D/907/2000), para. 6.2; and *Zheikov v. Russian Federation* (CCPR/C/86/D/889/1999), para. 7.2.

² See, for example, *Mukong v. Cameroon* (CCPR/C/51/D/458/1991), para. 9.2; and *Belier v. Uruguay*, communication No. 30/1978, para. 13.3.