



# 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. 2700/2015\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Mayrambek Topozov (represented by counsel, Rysbek Adamaliyev)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	7 July 2015 (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 7 December 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	24 March 2021
<i>Subject matter:</i>	Torture; arbitrary detention
<i>Procedural issue:</i>	None
<i>Substantive issues:</i>	Torture; lack of effective investigation; arbitrary detention; presumption of innocence
<i>Article of the Covenant:</i>	7, read alone and in conjunction with articles 2 (3), 9 (1)–(2) and 14 (3) (g)
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1. The author of the communication is Mayrambek Topozov, a national of Kyrgyzstan born in 1973. He claims that the State party has violated his rights under article 7, read alone and in conjunction with articles 2 (3), 9 (1)–(2) 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.

\* Adopted by the Committee at its 131st session (1–26 March 2021).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J Kran, Duncan Laki Muhumza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

\*\*\* Two individual opinions by Committee members Furuya Shuichi and Hernán Quezada Cabrera (dissenting) are annexed to the present Views.



**Facts as submitted by the author**

2.1 On 5 January 2011, the author was arrested by the police in the context of a counter-terrorism operation. He was brought to the police department of Alamudinsky district, where he was beaten and then lost consciousness. When he regained consciousness, he found himself in a cell, almost naked and handcuffed to a chair. There were five or six masked police officers in the cell who started to beat him and torture him with electric shocks with the aim of forcing him to confess to having cooperated with terrorists. The author refused, so the officers intensified their beatings. He was released the next day. The arrest and detention were not registered and, as a result, no procedural documents were filled out. The author was never informed of the reason for his arrest. He was held by the authorities for almost a full day, with no food or water, during which time he was tortured and beaten.

2.2 The author submits that he did not go to hospital immediately but that his condition worsened. As his speech was slurred and he was very weak physically, however, he finally decided to seek medical attention. He was kept in hospital from 10 to 25 February 2011. He underwent surgery to his collarbone after having been diagnosed with “chronic full dislocation”.

2.3 On 11 March 2011, the author filed a complaint to the prosecutor’s office of Alamudinsky district against the unidentified police officers who had unlawfully detained and tortured him on 5 January 2011. On 22 August 2011, the prosecution requested the author to be examined by a medical expert. A medical expert concluded that the author’s injuries – the “chronic full dislocation” of his left collarbone and injury to the soft tissues of the chest – were slight and could have been inflicted by a blunt object. The expert also concluded that it was impossible to estimate when the injuries had been caused owing to the time that had lapsed.

2.4 As a consequence, on 26 August 2011, the prosecutor’s office refused to open a criminal case. On 6 July 2012, the author appealed against that decision to the prosecutor’s office of Chuy region.<sup>1</sup> On 14 August 2012, his appeal was granted and his case was returned to the prosecutor’s office of Alamudinsky district for further investigation. On 24 August 2012, however, the prosecutor’s office again refused to open a criminal case.

2.5 The author appealed to the Alamudinsky District Court against the prosecutor’s refusal of 24 August 2012. On 12 November 2012, the Court granted the author’s request. On 31 December 2012, the prosecutor’s office of Alamudinsky district also filed an appeal, to the court of cassation. On 20 February 2013, the court instructed the prosecutor’s office of Alamudinsky district to carry out an additional investigation on the basis of the author’s allegations.

2.6 On 1 May 2013, after the additional investigation, the prosecutor’s office again refused to open a criminal case for lack of evidence. Following a complaint by the author dated 1 July 2013, the prosecutor’s office of Chuy region repealed the decision of the Alamudinsky district prosecutor’s office and returned the case for further investigation. On 15 August 2013, the Alamudinsky district prosecutor’s office once again refused to open a criminal case.

2.7 The author again complained to the Alamudinsky District Court. On 2 October 2013, the Court rejected the author’s complaint, finding that the investigation was complete and that the decision of the prosecutor’s office to refuse the opening of a criminal case was lawful. The author filed a cassation appeal to the court of Chuy region, which was rejected on 2 December 2013. The author’s appeal for a supervisory review was rejected by the Supreme Court on 18 February 2014.

2.8 The author requests the Committee to find a violation of his rights by the State party and to urge the State party to provide the following remedies: an effective investigation into his claims of torture and the prosecution and punishment of the perpetrators, as well as

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<sup>1</sup> According to the author, the delay in submitting the complaint was due to the fact that the author had not been provided with access to the testimonies and other materials of the case that had resulted in the decision of 26 August 2011. The author’s lawyer had to submit several petitions to be able to study the case and make copies of the documents.

adequate compensation and full rehabilitation for the author; a commitment by the State party to prevent similar violations from occurring in the future, in particular by ensuring that all detainees are registered from the moment of their arrest; and the establishment of an independent mechanism able to investigate allegations of torture in accordance with international principles.

### **Complaint**

3.1 The author claims a violation of his rights under article 7, read alone and in conjunction with article 2 (3), of the Covenant as he was beaten and tortured by police officers and left with no access to food or water. Furthermore, the State party failed to carry out a prompt and effective investigation into his allegations of torture by the police officers.

3.2 He also claims a violation of his rights under article 9 (1) and (2) of the Covenant on the basis that he was detained at the police department for a day without any procedural guarantees and he was never informed of the charges against him. His detention could be confirmed by several witnesses. He brought his claims before the domestic authorities and, although the author admits that he never asked for a lawyer, one should have been provided to him free of charge.

3.3 Finally, the author alleges a violation of article 14 (3) (g), as he claims that he was tortured with the aim of forcing him to confess that he was guilty of a crime.

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

4.1 On 21 April and 3 October 2017,<sup>2</sup> the State party provided its observations on admissibility and the merits. It confirms that on 18 February 2011 the author's mother complained to the Office of the Prosecutor General of Kyrgyzstan that, during a special counter-terrorism operation, law enforcement officers blew up a "recreation house" belonging to her son. During that operation, her son lost property in the form of furniture, consumer electronic goods and identity documents. The author's mother also alleges that the officers assaulted the author. On 11 March 2011, the author himself filed a complaint to the prosecutor's office of Alamudinsky district and asked it to take measures against the police officers who had assaulted him.

4.2 The State party was able to ascertain that on 4 January 2011, in Bishkek, a group of unknown persons attacked several law enforcement officers and, as a result, three officers were shot dead. It was later discovered that the attack was carried out by members of a religious extremist group who were also accused of other crimes committed in 2010.

4.3 On 5 January 2011, police officers of Alamudinsky district police department established that the suspects for the terrorist act of 4 January 2011 lived in a shed that had been converted into a place of residence, which, while occupied by the author's family, was owned by N.M. The place of residence was located on the premises of the gardening association "Energetic". During the special operation to apprehend them, the terrorists refused to surrender and shot and killed a law enforcement officer. It was therefore decided to blow up the structure, as a result of which two persons suspected of terrorism died. After the operation, the author was taken to the police department.

4.4 The medical forensic examination revealed that the bodily injuries to the author were to his collarbone and chest and were probably caused by a blunt object. The date of the injuries was, however, impossible to verify due to the lapse in time: the author had sought medical help on 10 February 2011, that is, 35 days after the events. The author himself was questioned and explained that, on the day in question, he was visiting his friend B.S. During the visit, fully camouflaged and masked men forced their way into the residence; one of them hit the author in the chest, after which he lost consciousness. When the author came to his senses, he was handcuffed and clothed only in his underwear. He was beaten with a baton and electrocuted. He was tortured by five or six masked police officers. Precisely because their faces were covered, the author could not identify them.

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<sup>2</sup> The text that was provided by the State party on 3 October, repeats, almost word for word, its previous submission of April 2017.

4.5 The author's friend B.S. was also questioned. She stated that, on the day in question, three men came to her house, identified themselves as police officers, arrested the author and left. She did not see any beatings and her house was not ransacked. She saw the author five days later and he disclosed no injuries. She also stated that there was no valuable property in the author's house.

4.6 The authorities also questioned N.M.,<sup>3</sup> who owned the house where the author resided. N.M. testified that in 2010 the author asked him to stay in his house. The author was a security guard for the above-mentioned gardening association. N.M. stated that the house, which was really a shed, only contained a few pieces of furniture, including an old couch, two armchairs, a bed, a kitchen cupboard and some small items. Last time N.M. saw the author was on 6 January 2011, when the author was in a hurry and asked him for 1,000 soms, which N.M. gave him. The author looked "satisfied" and did not bring up any complaints against law enforcement officers. The State party further submits that N.M. did not request any compensation for destruction of his property. The owner explained that the shed was old and that he was planning to demolish it himself and build a new house in its place.

4.7 The authorities also questioned the chief of the Alamudinsky police department, M.M., who stated that, on 5 January 2011, police officers of his department were requested to block the perimeter of a residence where some alleged terrorists were present. After the counter-terrorism operation, his officers went back to the department and did not arrest anyone that day. Similar statements were made by several other officers, such as J.B., M.S. and A.A., who were also present during the events in question. These facts and testimonies make the author's allegations of unlawful methods of investigation and inquiry baseless.

4.8 Consequently, the prosecutor's office refused to initiate a criminal case against the police officers. The author, through his lawyer, disagreed with this conclusion and filed a complaint to the Alamudinsky District Court. On 12 November 2012, the Court found that the decision not to initiate a criminal case was premature and baseless, and asked the investigators to conduct an additional inquiry into the allegations of torture. Those decisions were later reversed, however, and, on 2 December 2013, the author's complaint was rejected and his subsequent cassation appeal was left without consideration. That decision was confirmed by the Supreme Court of Kyrgyzstan on 18 February 2014.

#### **Author's comments on the State party's observations**

5.1 On 5 June 2017, responding to the State party's observations, the author reiterates that he was apprehended and beaten on 5 January 2011 and that he was subjected to torture until 3 a.m. After he was released, he learned that the house that he was renting had been blown up and that he had lost his identity documents. He was pressured and threatened by police officers who visited him several times after his release, blackmailing him and demanding bribes. Because he feared being tortured again, the author gave them money. As a result of the torture to which he was subjected, the author suffered injuries but could not pay for his own medical treatment. He was therefore accepted into a rehabilitation programme for victims of torture run by a local non-governmental organization. As part of the programme, he underwent treatment from 12 December 2011 to 3 January 2012 in Chuy regional hospital. There, doctors conducted a surgical operation on his collarbone, which had been injured while the author was under torture.

5.2 Instead of conducting a thorough investigation, the State party's authorities limited themselves to questioning four police officers, who denied ever apprehending the author or bringing him to the police department. Nevertheless, several different law enforcement agencies had participated in the counter-terrorism operation, including the national security services of Kyrgyzstan and rapid deployment forces. That was evident from the order refusing to initiate a criminal case dated 26 August 2011, which indicated that some 200–300 officers were present at the scene. Nevertheless, the investigators did not try to identify as many law enforcement agents as possible, only the four officers of the police department.

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<sup>3</sup> The State party provides references to statements and testimonies of witnesses, but no copies have been provided.

5.3 The author's friend also testified during the investigation that several police officers had come to her house, had arrested the author and had taken him away. The State party does not explain who those officers were or where the author was taken. The author also submits that there were at least four other witnesses who had witnessed his apprehension by the police.

5.4 The State party argues that the author waited 35 days before requesting a medical examination. The author is a person of modest means who did not have money for medical treatment. Moreover, he was afraid of being persecuted by law enforcement agencies, especially after he was threatened. Later, however, the author's condition worsened and, on the insistence of his mother, he decided to seek medical attention. As a result of a medical examination, it was ascertained that the author's collarbone had been broken, that the soft tissue on his chest had been injured and that those injuries might have been caused by a hard object. Nevertheless, the authorities did not question the doctors who had examined the author.<sup>4</sup>

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

#### *Considerations 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 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.

6.4 The Committee notes the author's claims under article 14 (3) (g) of the Covenant. In the absence of any further pertinent information on file, however, the Committee considers that the author has failed to sufficiently substantiate these allegations for the purpose of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that the author has sufficiently substantiated, for the purpose of admissibility, his claim of a violation of his rights under article 7, read alone and in conjunction with articles 2 (3) and 9 (1)–(2), of the Covenant. The Committee declares the claims 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 5 January 2011, he was apprehended by unknown camouflaged and masked men and was taken to the Alamudinsky police department, where he was allegedly beaten and tortured by five or six unknown police officers with the aim of forcing him to confess that he was guilty of terrorism. The author submits that he was stripped to his underwear, beaten, electrocuted and demanded to confess to a crime he did not commit. When the author refused to make such a confession, the torture and beatings intensified. He was released the next day. The Committee notes that, initially, the author claims that he refused to undergo a medical examination because he feared being subjected to further beatings by the police officers, as retaliation. He was also concerned about the cost of a medical diagnosis and treatment and was only treated with the financial assistance of a local non-governmental organization. The Committee also notes that the

<sup>4</sup> The author also notes the concluding observations of the Committee against Torture on the second periodic report of Kyrgyzstan (CAT/C/KGZ/CO/2).

author filed numerous complaints and that, on five different occasions, the State party's authorities refused to initiate a criminal investigation, in the absence of a *corpus delicti*.

7.3 The Committee also notes the information provided by the State party according to which a group of unknown persons attacked several law enforcement officers and that this attack resulted in the death of three officers. It was later discovered that the attack was carried out by members of a religious extremist group (see para 4.2 above). During a special counter-terrorism operation, law enforcement officers blew up a "recreation house" where the suspects were hiding and that, according to the author's mother, belonged to her son (see para. 4.1 above). After the operation, the author was brought into police custody and taken to the police department for questioning. However, while the State party admits that the author was brought to the police station, it denies holding the author, torturing him or forcing him to confess to crimes he did not commit. In fact, no charges were ever brought against the author, who left the police department the next day after being questioned, which does not seem to be consistent with his allegation that he was tortured for the purpose of extracting a confession. The Committee notes that the State party initiated several preliminary investigations, which were closed due to the absence of a *corpus delicti*. During those investigations, witnesses were questioned, including the police officers who were present at the scene but also independent witnesses, such as the author's friend B.S. (see para. 4.5 above) and N.M. (see para. 4.6 above). Those witnesses testified that they did not see the beatings or any signs of injury on the author on 5 and 6 January 2011, or even "five days later" (see para. 4.5 above). The Committee further notes that the author underwent a medical examination only on 10 February 2011, that is, 35 days after the alleged events. The Committee notes that, given the amount of time that had lapsed before the author had sought medical treatment, neither the medical experts nor the authorities could conclude that the signs of injury on the author, which were slight, had been caused by torture, since they could have been caused by a blunt object after the author had left the police department (see paras 2.3 and 4.4 above). Finally, the Committee notes that the author initially alleged that surgery had been performed on his collarbone in February 2011 (see para 2.2 above) but later acknowledged that it had only been performed in December 2011 (see para 5.1 above). Therefore, the Committee, given the circumstances of the case and the information provided by the parties, and taking into account the several inconsistencies in the author's arguments, cannot conclude that the facts before it disclose a violation of the author's rights under article 7, read alone and in conjunction with articles 2 (3) and 9 (1)–(2), of the Covenant.

7.4 The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not disclose a violation by the State party of any provisions of the Covenant.

## Annex I

### Individual opinion by Committee member Furuya Shuichi (dissenting)

1. I am unable to concur with the conclusion that the facts submitted to the Committee do not constitute a violation of the author's rights under articles 7 and 9 of the Covenant. I believe that the present case reveals a breach of those articles for the reasons set out below.

2. According to the jurisprudence of the Committee, a State party is responsible for the security of any person it holds in detention and, when an individual is injured while in detention, it is incumbent on the State party to produce evidence showing that it is not responsible.<sup>1</sup> 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.<sup>2</sup>

3. In the present case, the author submits that he was taken to the police department of the Alamudinsky district for questioning on 5 January 2011 and left there the next day. The State party observes that, according to the testimony of the chief of the Alamudinsky police department, M.M., his officers did not arrest anyone on that day, and similar explanations were obtained from several other officers (para. 4.7).<sup>3</sup> Nevertheless, the State party itself acknowledges that the author was taken to the police department after the counter-terrorism operation had been completed (para. 4.3). It also cites the testimony of the author's friend B.S. that three men came to her house, identified themselves as police officers, arrested the author and left (para. 4.5). In the light of these facts submitted by the State party to the Committee, it seems undeniable that the author was brought into custody by police officers and stayed in the police department for a full day, although it is not clear whether his custody was an official arrest or to which organization those police officers belonged.

4. The author underwent a medical examination 35 days after the alleged custody. The majority of the Committee relies on this fact to find that no violation occurred in the present case. In my view, however, a crucial fact is that the author was actually injured, which was confirmed by a medical expert (paras. 2.3 and 4.4), and no one testified that he had been injured before his custody on 5 January 2011. As to whether the author was injured on or after the day of his arrest, the onus is on the State party to demonstrate that his injuries were not a result of alleged torture in the police department. Nevertheless, the State party has not submitted any arguments to counter the author's claim that the injuries took place in the police department. In accordance with paragraph 11 of the Committee's general comment No. 20 (1992), when a person is interrogated, the time and place of all interrogations should be recorded, together with the names of all those present, and this information should also be available for purposes of judicial or administrative proceedings. Despite this obligation, the State party has not identified who arrested the author and where he was interrogated, nor provided other relevant information to the Committee. In the absence of any counterargument or evidence provided by the State party, I have to give due weight to the author's allegation and consider that his treatment by the State party's authorities constitutes a violation of his rights under article 7 of the Covenant.

5. Furthermore, under article 9 (2) of the Covenant, anyone who is arrested should be informed, at the time of arrest, of the reasons for his or her arrest. In accordance with paragraph 13 of the Committee's general comment No. 35 (2014), arrest within the meaning of article 9 need not involve a formal arrest as defined under domestic law. In accordance

<sup>1</sup> See, for example, *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.

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

<sup>3</sup> Unless otherwise indicated, the paragraph numbers in parentheses refer to the Committee's Views to which the present joint opinion is annexed.

with paragraph 24 of that same general comment, because “arrest” means the commencement of a deprivation of liberty, the requirement to inform those arrested of the reasons for their arrest applies regardless of the formality or informality with which the arrest is conducted and regardless of the legitimate or improper reason on which it is based.

6. In the present case, the author claims that he was not informed, at the time of arrest, of the reasons for the arrest and that his arrest was not registered in any official document. As I have already pointed out in the previous paragraph, the State party acknowledges the fact that the author was taken to the police department. Despite this, it has not provided any arguments to counter the author’s claim. In the circumstances as described, and in the absence of relevant information or explanations by the State party, I have to consider that the author’s rights under article 9 (1)–(2) have been violated.

7. Accordingly, I conclude, dissenting from the majority of the Committee, that the facts submitted before the Committee in the present case reveal a violation of articles 7 and 9 of the Covenant.



## Annex II

[Original: Spanish]

### **Individual opinion by Committee member Hernán Quezada Cabrera (partially dissenting)**

1. With regard to communication No. 2700/2015 (*Topozov v. Kyrgyzstan*), I agree with the Committee's finding that it is not possible to conclude, on the basis of the information provided by the parties, that the facts established disclose a violation of the author's rights under article 7, read alone and in conjunction with article 2 (3) of the Covenant.
2. However, I regret that I am unable to join the majority of the members of the Committee in finding that the facts under consideration do not disclose a violation of article 9 (1)–(2) of the Covenant, for the reasons set out below.
3. The author claims to have been deprived of his liberty from 6.30 p.m. on 5 January until 6 January 2011 without being informed of the reasons for his arrest and without it being officially recorded. In this regard, the State party provides no pertinent explanation regarding the events during this time, claiming only that the author was brought to the police station but was never held there.
4. In the absence of any reason provided by the State party to justify the author's deprivation of liberty and given the State party's failure to establish whether the applicable procedural rules were observed in connection with it, the detention can be considered arbitrary and unlawful. In this respect, the State party did not provide any information to enable a determination of whether the author's detention was carried out on the basis of grounds and procedures established by law. In addition, the author reports that he was not informed of the reasons for his detention, a claim that was not refuted by the State party.<sup>1</sup>
5. In the circumstances as described, and in the absence of further relevant information or explanations from the State party, it should be concluded that the author's rights under article 9 (1)–(2) of the Covenant have been violated.

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<sup>1</sup> General comment No. 35 (2014), paras. 24–25 (on the obligation to inform persons who are deprived of liberty of the reasons for the arrest).