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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. 2618/2015*, **

Communication submitted by:	Amir Abdiev (represented by counsel, Marzia Aitkazinova)
Alleged victim:	The author
State party:	Kazakhstan
Date of communication:	27 January 2015 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 8 June 2015 (not issued in document form)
Date of adoption of Views:	21 March 2023
Subject matter:	Denial of the right to cross-examine a witness; refusal to reopen a criminal case despite the fact that evidence used as a basis for conviction was proven to have been falsified
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Fair trial; competent independent and impartial tribunal; criminal conviction; criminal procedure; equality before the courts and tribunals; facts and evidence; witnesses; impartial investigation; miscarriage of justice
Article of the Covenant:	14 (1), (2), (3) (e) and (5)
Articles of the Optional Protocol:	2 and 5 (2) (b)

1. The author of the communication is Amir Abdiev, a national of Kazakhstan born in 1982. He claims that Kazakhstan violated his rights under article14 (1), (2), (3) (e) and (5) of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Kazakhstan on 30 September 2009. The author is represented by counsel.

* Adopted by the Committee at its 137th session (27 February–24 March 2023).

** The following members of the Committee participated in the examination of the communication: Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martinez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernan Quezada Cabrera, José Manuel Santos Pais, Tijana Šurlan, Kobaujah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

Factual background

2.1 The author is serving a 17-year prison sentence. He claims that he has been wrongly identified, accused and charged for having stabbed two men causing the death of one of them and serious bodily injuries to the other. According to the documents in the file, the incident took place on the night of 30 July 2005 in the Montazhnik recreation centre, which is not far from the city of Aktau, Kazakhstan. A fight broke out among holidaymakers, in the course of which five persons were stabbed with a knife, including G.A., a national of Belarus, and T.A., a national of Kazakhstan. The latter subsequently died in a hospital.

2.2 Shortly after the incident, the investigator M.A. arrived at the scene of the crime. The case file reveals that M.A. failed to order a forensic examination of material evidence, including blood stains on clothes worn by the author on the night of the fight.[1]

2.3 The author submits that, on 2 August 2006, the Aktau City Court found L.V., a national of Belarus, guilty of causing bodily harm to two persons injured in the Montazhnik recreation centre but considered that L.V.'s guilt in injuring T.A. had not been established. After having been sentenced to suspended imprisonment, L.V. departed for Belarus. The author underlines that, in his statements following the fight, G.A. could not identify the person who had stabbed him. Therefore, no criminal case on the fact of inflicting injuries to G.A. was initiated in 2005. Having undergone medical treatment in Kazakhstan, G.A. also departed for Belarus.

2.4 On 5 August 2006, E.I., another investigator from the Aktau police department, took over the investigation of the death of T.A. and began investigating the infliction of bodily harm to G.A. In October 2006, E.I. collected witness statements from three nationals of Belarus, L.O., L.N. and Y.A., who identified the author as an active participant of the fight. In February 2007, E.I. travelled to Stolin, Belarus, to collect additional witness statements, under a judicial cooperation framework based on the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Chisinau Convention) of 2002". Several witness statements were recorded in Belarus, including those of G.A., S.E. and Y.V.

2.5 In May 2007, an indictment act against the author was submitted to the Mangistau Regional Court on the basis of a number of witness statements collected in Kazakhstan and Belarus. On 5 September 2007, the Court found the author guilty of the murder of T.A. and of causing serious injuries to G.A. and sentenced the author to 17 years in prison. The Court established that, on 30 July 2005, the author, under the influence of alcohol, had entered building N12 of the Montazhnik recreation centre, where he stabbed T.A. in the chest. Two nationals of Belarus, G.A. and Y.V., heard a noise and entered the building. They saw the author with a knife in his hand and T.A. suffering from a stab wound. The two Belarusians heard T.A. say, "Amir, why did you stab me?" The author acted aggressively and demanded that G.A. and Y.V. leave the building, which they did. Later that night, the author engaged in a fight with Belarusian holidaymakers, causing injuries to G.A. A nurse in Mangistau Regional Hospital, where T.A. had been placed in intensive care, claimed that she had heard him calling the name of the author shortly before he died.

2.6 The Mangistau Regional Court established the guilt of the author on the basis of, among other things, the written witness statements of several nationals of Belarus, including L.O., L.N., Y.A, G.A., S.E. and Y.V. The author submits that, in total, the testimonies of nine Belarusian witnesses, who were not present in the courtroom, were read out during his trial. The author draws the Committee's attention to contradictions in the witness testimonies given during the trial. He stresses that the nurse who testified against him in court had not been heard during the pretrial investigation. Contrary to her declarations, the doctor who had been on duty in the hospital on the night of T.A.'s death testified that access to the intensive care room had been restricted and that he had not seen that nurse in the room.

2.7 The author filed an appeal against the judgment of 5 September 2007 of the Mangistau Regional Court with the Supreme Court of Kazakhstan, claiming that the lower instance court

[1] Judgment of Mangistau Regional Court of 5 September 2007. The investigator, M.A., was later prosecuted and dismissed from the police force for having falsified evidence in the author's case (see observations of the State party in para. 4.7).

had failed to assess serious discrepancies in the witness statements given by the nationals of Belarus right after the event and those collected subsequently in Belarus. He also underlined that, in none of the preliminary witness statements given after the incident, had he been accused of killing T.A. The Supreme Court dismissed the appeal noting that witness statements provided by Belarusian nationals had been collected in line with the Chisinau Convention and that the witnesses had testified against the author. On 31 October 2007, the Supreme Court dismissed the author's appeal noting that it had assessed all evidence in the case and had found the ruling of the regional court lawful. On 11 March 2008, the author's further appeal under the supervisory review procedure was dismissed by the Supreme Court.

2.8 On an unspecified date, the author's mother requested the Belarusian prosecutorial authorities to verify the alleged falsification of witness statements collected in Belarus in 2007. By a letter of 12 September 2008, the Office of the Prosecutor of Stolinsk district, Brest region, Belarus, informed the author's mother that the Belarusian investigator, P.D., who had worked with the Kazakh investigator, E.I., in collecting evidence in Belarus in 2007, had confessed to not having interrogated the witnesses G.A. and S.E. but having merely signed their witness statements prepared by E.I. The letter also stated that S.E. and G.A. had confirmed that they had been interrogated by a Kazakh investigator without the presence of a representative of the Belarusian investigative authorities.[2]

2.9 The author submits files related to an investigation conducted by the Office of the Prosecutor of Stolinsk district, Belarus, in relation to the alleged falsification of evidence by P.D. in the author's criminal case. According to the files, the witness S.E. declared that, in March 2007, he had been interrogated by a Kazakh investigator but had refused to sign the witness statement prepared by the investigator, because it contained incorrect information. Moreover, he claimed that the investigator from Kazakhstan had attempted to offer him money in exchange for signing the false report. It was also established that the mother of the deceased T.A. had accompanied the investigator, E.I., to Stolin and, after E.I. had informed her that some witnesses had refused to testify, she told him that she would "pay everyone to send the assassin to prison". In addition, the Office found that the signatures of attesting witnesses in the reports on the identification of a person and of the murder weapon (knives) by G.A., S.E. and Y.V. had been falsified. By a resolution of 12 September 2008, the Office of the Prosecutor of Stolinsk district, Belarus, dismissed the request of the author's mother to open criminal proceedings against the investigator, P.D., arguing that the latter had not personally interrogated the witnesses and "therefore had not made any modifications in the witness statements and had not been formally aware of the falsified evidence".

2.10 Starting on 17 September 2008, the author's mother filed multiple complaints with State institutions, including the Office of the Public Prosecutor of Aktau, claiming that materials of the author's criminal case had been falsified by the investigator, E.I.[3] In March and April 2010, a police investigator from Mangistau Region travelled to Belarus to conduct an investigation into the allegations of falsification of evidence by E.I. The author submits that, in the course of the investigation, the Office of the Public Prosecutor of Aktau conducted several examinations. According to an examination conducted on 21 June 2010, the signatures of S.E. in the reports from 2007 were made by another person. Pursuant to an examination conducted on 20 December 2011, the photographs of knives presented to the witnesses from Belarus were similar to those which had been registered as a part of the criminal case against L.V. According to an examination conducted on 21 September 2010, the signature of the investigator who had compiled the charts with photographs was made by another person. Pursuant to an examination conducted on 16 July 2010, the signatures of the attesting witnesses on the suspect identification reports prepared during the interrogation of the witnesses L.N., Y.A. and L.O. were not authentic. G.A. informed the Belarusian and Kazakh investigative authorities that he had been interrogated in 2007 by a Kazakh investigator. He claimed that one of the witness statements allegedly signed by him contained incorrect data. S.E., when interrogated by a member of the Office of the Public Prosecutor of Stolinsk, Belarus, reiterated his previous statements that, in 2007, he had been interrogated

[2] The author submits a copy of the letter and a copy of a written statement of P.D. dated 31 July 2008.

[3] The author motioned to open a criminal case against E.I. many times during 2008 and 2011. Each time the authorities decided to open a criminal investigation, the higher instance court would dismiss the decision.

by a Kazakh investigator who had offered him money in exchange for signing a false witness statement. The former investigator, P.D., reiterated his statements that E.I. had conducted interrogations of witnesses in Belarus and that P.D. had only signed the witness statements prepared by E.I.[4]

2.11 On 29 August 2012, the Court of Aktau found E.I. guilty of falsifying the signatures of the attesting witnesses on suspect identification reports prepared during the interrogations of L.O., L.N. and Y.A.[5] and sentenced him to three years of suspended service, barring him from any governmental post during that period. The Court did not uphold the charges related to the alleged falsification by E.I. of witness statements in Belarus because, it argued, there were discrepancies between the statements of E.I. and of P.D. in that regard, and it was impossible for the Court to hear the latter. Therefore, the Court dismissed the charges, due to the fact that "the pretrial investigative authorities had not taken the necessary steps to eliminate those shortcomings".[6]

2.12 On 2 October 2013, the author submitted a cassation complaint to the Cassation Court of the Mangustau Region, noting that the assessment of the criminal case of E.I. by the Court of Aktau had been incomplete. The author noted that the Court should have applied article 413 (1) and (2) of the Code of Criminal Procedure.[7] The author also argued that the Court had failed to invite the Belarusian witnesses, and it had not requested the Belarusian courts for assistance in that matter, as envisaged in the Chisinau Convention. With reference to article 415 of the Code of Criminal Procedure, the author argued that the sentence should be quashed or modified.[8] On 23 October 2013, the Cassation Court of the Mangistau Region dismissed the author's cassation appeal stating that the investigative activities in Belarus had been conducted by the Belarusian investigator, P.D., on the basis of the Chisinau Convention, as attested by his signature. The author's further appeal to the Supreme Court under the supervisory review procedure was dismissed on 10 February 2014.

2.13 On 23 April 2013, the author appealed to the Supreme Court requesting to have his case reopened in view of the newly discovered circumstances, stating, inter alia, that the witness statements collected in Belarus on which his conviction had been based had been falsified by the investigator, E.I.[9] In its order of 22 May 2013, the Supreme Court noted that the author's criminal conviction was based on the witness statements of G.A., Y.V., S.E.. L.O., L.N. and Y.A. The Court confirmed that the investigator, E.I., had been convicted for falsifying the signatures of the attesting witnesses in the witness statements of L.O., L.N. and Y.A. The Court considered, however, that the author's guilt had been fully proven in the Aktau Court, noting that its ruling had been based on the appraisal of physical evidence and witness testimonies. The Supreme Court contested the author's arguments of falsification of witness statements collected in Belarus, noting that it was the Belarusian investigator who had conducted the investigation and had signed the witness statements. The Supreme Court reiterated the findings made by the Mangistau Regional Court on 5 September 2007 and

[4] Witness statements of S.E. and D.P. of 16 March 2017 of P.D. to the Public Prosecutor's Office of Stolinsk district submitted by the author.

[5] The court established that E.I. had submitted his relatives as attesting witnesses and had forged their signatures.

[6] The Court noted that, according to the statements of P.D., the witnesses in Belarus were heard only by E.I., and P.D. only signed the witness statements prepared by E.I. The latter claimed, however, that he had not participated in any investigative activities in Belarus.

[7] The author refers to article 413 (1), which reads: A court investigation which left unclear the circumstances, of which the establishment might have material significance for the accurate adjudication of the case, shall be recognized as biased or incomplete; and article 413 (2), which reads: A court investigation shall be recognized as incomplete if persons whose testimony has material significance for the case have not been interrogated.

[8] Where the bias or incompleteness of the court investigation of first instance resulted from an erroneous exclusion from consideration of the allowed evidence or unreasonable denial to a party of examining the evidence, which may have significance importance for the case, or examination of incompetent evidence.

[9] The author submitted to the court all related materials pertinent to his case, including witness statements, decisions and reasoning of the courts and experts' reports.

dismissed the author's appeal to reopen the case and review the materials on the basis of the newly discovered circumstances.

2.14 The author submits that, in March 2014, he requested the Office of the Prosecutor General to bring an appeal against the decision of the Supreme Court. The Office denied his request and terminated all correspondence with the author. Therefore, the author submits that all domestic remedies available to him have been exhausted.

Complaint

3.1 The author claims that the State party has violated his rights under article 14 (1) of the Covenant, given that the courts failed to demonstrate impartiality, were biased, promoted the interests of the accusing party, which influenced the decision, and convicted the author unlawfully. In the trial proceedings, the author's accounts were ignored and the proceedings were conducted in a biased way, against him. Witness testimonies supporting the author's innocence were not taken into account, whereas dubious evidence against him, which aligned with the charges against him, was counted as evidence proving his guilt.

3.2 The author also claims that his right to be presumed innocent until proven guilty under article 14 (2) has been violated, because the court erred in sentencing the author for criminal acts that he did not commit. In this context, the author submits that the examination reports have demonstrated that the witness statements that were used as evidential proof to condemn the author were falsified. The author stresses that those testimonies should have been declared inadmissible, given that they were obtained in violation of article 116 of the Criminal Code of Kazakhstan.[10] The author submits that his criminal case should have been reopened in view of the newly discovered circumstances.

3.3 The author submits that the State party acted in violation of article 14 (3) (e), because the courts failed to ensure the attendance and examination of witnesses who had allegedly made written statements against him. The author submits that the Criminal Code provides for circumstances which could exclude the possibility of a person's appearance at the court session, including in cases of witness's death, serious illnesses, alleged business trip or departure from the place of residence and failure to establish the whereabouts of a witness. However, the court failed to ensure the presence of important witnesses whose statements at the pretrial investigation stage differed from those read out at the trial. The courts also failed to produce any document that could prove that attendance of those witnesses was not possible. The author claims that he raised those inconsistences in his appeal with the Supreme Court and under the supervisory review procedure to the General Prosecutor, however, they failed to properly address them.

3.4 The author further claims that the State party violated his rights under article 14 (5) of the Covenant, because, despite his numerous appeals, his sentence was not reviewed by a higher tribunal in accordance with the law. The author notes that, in line with article 471 of the Code of Criminal Procedure, the court sentence that has entered into legal force may be overturned and proceedings in the case may be reopened, in view of the newly discovered circumstances. The Code includes as a basis for the resumption of proceedings in a criminal case the perpetration of criminal acts by an investigator that lead to an unlawful sentence. The author underlines that, although the fact that witness statements were falsified was confirmed by numerous courts, the judicial authorities refused to reopen the author's case.

3.5 The author requests that the Committee recommend that the State party reopen his criminal case, in line with article 14 of the Covenant.

State party's observations on admissibility and the merits

4.1 By notes verbales of 7 December 2015 and 21 January 2016, the State party submitted its observations on the admissibility and the merits of the communication. The State party informed the Committee that, on 31 July 2005, criminal proceedings in relation to the murder

[10] Article 116 is devoted to factual data that is not admissible as evidence. It also states that evidence that are received in violation of the law shall be recognized as invalid and that they may not be used as a basis for laying charges.

of T.A. were instituted. On 22 September 2005, the Office of Criminal Investigations of the Department of Internal Affairs of Aktau dismissed criminal charges in relation to the murder of T.A. against the author and two other persons, due to a lack of evidence. On 10 July 2006, the same Office suspended the investigation into the murder, due to the impossibility of identifying the suspects. On 14 March 2006, the Office of the Public Prosecutor of Mingistau overturned that decision.

4.2 On 5 September 2007, the Mangistau Regional Court sentenced the author to 17 years' imprisonment for violating articles 96 (2) (i), murder with hooligan motives, and 103 (2), intentional infliction of grievous harm to health, of the Criminal Code of Kazakhstan.

4.3 On an unspecified date, the author appealed the decision of the Mangistau Regional Court to the Supreme Court, an appeal which was dismissed on 31 October 2007. The author's further appeal under the supervisory review procedures was dismissed by the Supreme Court on 11 March 2008.

4.4 The State party observes that the author's appeals to reopen his case in view of the newly discovered circumstances were assessed by domestic courts. On 15 January 2013, the specialized interdistrict court of the Mangistau region refused to hear the author's appeal. On 7 March 2013, the Mangistau Regional Court upheld the decision of the court of lower instance. On 22 May 2013 and 9 February 2015, the author's further appeals under supervisory review procedures were dismissed by the Supreme Court.

4.5 The State party observes that, on 30 July 2005, in the Montazhnik recreation centre, at around 11 p.m., the author, who was intoxicated by alcohol, entered building N12 for no particular reason and stabbed T.A. in his chest, inflicting serious, life-threatening injuries. When G.A. and Y.V., nationals of Belarus, entered that building, they saw the author with a knife in his hand and T.A. sitting on a chair, suffering from a stab wound. Subsequently, at around midnight, the author and his two friends started a fight with six nationals of Belarus residing at the recreation centre. As a result of the incident, several people suffered minor injuries. The State party observes that the author, who was carrying a knife and a pistol in his hand, according to S.E.'s witness statement, stabbed a national of Belarus, G.A., in his stomach. The latter subsequently underwent surgery in Mangustau regional hospital.

4.6 The State party further observes that, in the context of the pretrial investigation, sufficient pieces of evidence and materials were collected to result in charging the author with the murder of T.A., and they were properly apprised at the regional court hearing. In this context, the State party refers to the witness statements of G.A. and Y.V., who saw that the author and victim were both in building N12 and that the author was holding a knife in his hand and an injured T.A. was saying, "Amir, why did you stab me?" The witness reports also demonstrated that the author was dressed in yellow shorts, was holding a knife in his hand throughout the fighting and was the most active participant in the clash. Referring to the witness statements of U.T. and N.M., the State party observes that, before he died, the victim clearly called the author's name in the hospital.

4.7 The State party notes that five members of the police department who participated in the investigation of this criminal act provided their testimonies in court and confirmed that the author was the most active participant in the fight. Law enforcement officers interviewed those involved and collected their accounts of the event, which were subsequently submitted to the investigator, M.A., who later destroyed them. In this context, the State party observes that, on 29 February 2008, the Aktau City Court sentenced the former investigator, M.A., to a suspended sentence of three years, with a two-year probation period, and banned him from holding any governmental position for three years. The City Court established that, on 31 July 2005, M.A., as part of the operational investigation group, had arrived at the scene of the crime and collected hard evidence, including curtains, broken chair legs and pieces of broken glass. However, M.A. failed to examine important pieces of evidence, as a result of which they were destroyed and lost evidential value. The author's blood-stained shorts and his white t-shirt were not examined as material evidence, but were handed over to the author's relatives, the identity of whom could not be established by the City Court. In addition, M.A. failed to file a report on the seizure of knives and, with the aim of forging evidence and avoiding the author's criminal conviction, destroyed three witness statements, according to which, the author was holding a knife in his hand and wearing yellow shorts during the events.

4.8 Referring to the legal proceedings against the investigator, E.I., the State party observes that the procedural violations that he committed were not of a nature sufficient to affect the reliability of evidence or to influence the outcome in the court assessment in relation to the author's case. It observes that, on 17 October 2006, E.I., when completing the witness reports on the identification of a person by L.N., Y.A. and L.O., forged the signatures of two attesting witnesses, A.N. and D.A. On 29 August 2012, the Aktau City court found E.I. in violation of article 348 (3), forged evidence of the Criminal Code and sentenced him to a suspended sentence of three years. The Supreme Court upheld that decision and dismissed the author's appeal to reopen his case on the basis of the newly discovered circumstances, noting that E.I. had already been convicted for the falsification of witness statements. Regarding witness statements collected in Belarus, the State party observes that the Supreme Court accepted them as valid, noting that E.I. was on an official trip, in line with the agreement with Belarus. The State party disagrees with the author's arguments and observes that there were no discrepancies between the Belarusian account of events that were recorded immediately after the fighting and those collected by the investigator, E.I., in Belarus.

4.9 The State party observes that the domestic courts have established that E.I. never conducted the investigation in Belarus but was present during the interrogations, as could be confirmed by the fact that the signature on related witness reports belonged to the Belarusian investigator, P.D. The competent Belarusian authorities took a procedural decision not to open a criminal case against P.D., who later resigned voluntarily from his job. The State party refers to the Supreme Court decision under the supervisory review procedure, dated 22 May 2013, and observes that it dismissed the author's appeal to reopen the case on the basis of the newly discovered circumstances.

4.10 The State party concludes that, despite the conviction of two Kazakh investigators, the existing evidential materials on file were sufficient to confirm the author's guilt in committing a serious criminal act and upholding the earlier ruling on his conviction.

4.11 Referring to the author's claims that none of the nationals Kazakhstan testified against the author, the State party observes that the witnesses, U.T. and N.M., did hear the victim calling the name of the author shortly before he died in the hospital. The State party notes that U.T. is a family friend of the deceased and, as a health-care professional, was able to enter the intensive care room by wearing her white medical coat. The State party also observes that the administrator of the Montazhnik recreation centre gave her account of the events, noting that the fight first erupted between two groups of nationals of Kazakhstan, including the author on one side, and the victim on the other, and then grew into a larger fight involving nationals of Belarus. The State party reiterates that five representatives of the police department also provided their account of the author's active involvement in the fight.

4.12 Concerning the author's claims that the State party failed to ensure the attendance of Belarusian witnesses at the trial, the State party observes that, as per the letter of the Prosecutor of the Brest Region dated 25 June 2007, the witnesses, G.A., B.M. and Y.V., refused to travel to attend the proceedings in Kazakhstan on various grounds. For example, G.A. could not travel on the given date due to his poor state of health, following his two surgeries. The State party observes that the court sent several letters to Belarusian witnesses, notifying them about their summons to appear at the trial, to no avail. On the basis of its established legal procedure, the testimonies of those witnesses were read out at the hearing and accepted by the Mangistau Regional Court.

4.13 Referring to the author's claim that there were substantial discrepancies in witness statements given by several Belarusian nationals, the State party observes that the domestic courts have thoroughly assessed all these claims and, on the basis of the totality of the evidence presented by all parties, sentenced the author to 17 years' imprisonment.

4.14 The State party observes that the author's claims of a violation of his right to a fair trial does not have standing and notes that the witness testimonies of those who were not able to attend the trial were read out and appraised by the court.

4.15 The State party also observes that the author's rights under article 14 (1) of the Covenant has been fully guaranteed and respected. In this context, the State party referred to

its national legislation[11] and confirmed that the principles of fair trial, equality before courts, right to judicial defence are reflected in the Constitution and the Code of Criminal Procedure of the State party. It further observes that the criminal case of the author was considered by competent, independent and impartial court through an open public hearing. The equality of arms principle was fully guaranteed and the court was able to examine all witness testimonies during its hearings.

4.16 Referring to author's claims under article 14 (3) (e), the State party observes that national courts impartially assessed all witness statements and dismisses several of them as they lacked credibility. The testimonies of five witnesses were dismissed, due to their inconsistency and owing to the fact that the witnesses were the author's friends, i.e. who had a personal interest in the outcome of the court proceedings.

4.17 Concerning the author's claims under article 14 (2) of the Covenant, the State party observes that, in line with article 77 of the Constitution, when applying the law, the judge is to be guided by the principles according to which a person is considered to be innocent of committing a crime until his or her guilt is recognized by the court in its judgment that has entered into legal force. The author was sentenced to 17 years' imprisonment for violating articles 96 (2) (i), murder based on hooligan motives, and 103 (2), intentional infliction of grievous harm to health, of the Criminal Code of Kazakhstan. The Supreme Court upheld that ruling in its decision of 31 October 2007. From that day, the ruling entered into force.

4.18 The State party observes that the author's rights under article 14 (5) of the Covenant was also respected and guaranteed by article 31 of the Code of Criminal Procedure, which states that every convicted or acquitted person is to have the right to the reconsideration of the sentence by a higher court. The author's appeals were considered by appellate courts and through the supervisory review procedure.

4.19 The State party concludes that the author's claims of violation of his rights under article 14 of the Covenant are unfounded and should be dismissed.

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

5.1 On 29 January 2016, the author responded to the State party's observations, stating that the national authorities acted in contradiction to articles 111[12] and 112[13] of the Code of Criminal Procedure. In this context, the author notes that the Supreme Court, by refusing to reopen the case on the basis of the newly discovered circumstances, failed in reviewing the facts of the falsification of witness statements, in particular those that were collected in Belarus, i.e. those of the witnesses G.A., S.E. and Y.V., whose falsification was revealed as a result of the investigation conducted by the Belarusian authorities. The author reiterates that G.A. said that he did not remember who stabbed him in his stomach and that he could not identify the perpetrator, given that he had lost consciousness right after the incident, and that he never mentioned in his testimony such sentence as "Amir, why did you do this to me". Y.V.'s statements were of a similar nature, which could be confirmed by his letter to the Chairman of the Commission on Criminal Affairs under the Supreme Court of Belarus dated 30 September 2007, in which he denied hearing the victim calling the author's name, whereas S.E. did not even sign the investigation report presented by the Kazakh investigator, because it contained incorrect information.

5.2 The author refers to State party's observation, in which it indicated that G.A. and Y.V. saw the author standing by the wounded victim in building N12. He contends that this

[11] The reference is made to articles 13 (2), 14 (2), 77 of the Constitution, as well as articles 12, 21 (2), 23, 24 (3), (4) and (5) and 29 (1) of the Code of Criminal Procedure, of Kazakhstan.

[12] Article 111 reads: The evidence in criminal case is legally obtained evidence on the basis of which in the manner, provided for in this Code the body of inquiry, interrogating officer, investigator, procurator, the court establishes the presence or absence of the act, provided by the Criminal Code of Kazakhstan, the commission or omission of an act by the suspected, accused or the defendant, his or her guilt or innocence, as well as other circumstances relevant for the proper resolution of the case.

[13] Article 112 reads: The evidence must be declared not admissible as evidence, if they are obtained in violation of this Code, which, through deprivation or restraint of the legally guaranteed rights of participants in the proceedings or in violation of other rules of criminal procedure in pretrial investigation or judicial proceedings had, or could affect the reliability of the evidence …

statement was not corroborated by the testimony of L.O.,[14] who testified that he had entered the building before the two witnesses.

5.3 The author submits that, although he participated in the fight, as many others did, that cannot be used as a proof of his guilt in committing a murder. Therefore, the State party's statement about author's active participation in the fight with a knife in his hands, as presented by several witnesses, including five policemen,[15] cannot be used as a confirmation of his guilt.

5.4 The author argues that, while the court accepted the witness statements by U.T. and N.M., who were close family friends of the victim, it dismissed the witness statements in favour of the author's case, arguing that they were inconsistent and presented by interested persons. The author submits that U.T. and N.M. indeed arrived at the hospital, however, their accounts of overhearing the victim calling the name of the author are dubious.

5.5 The author maintains that the national courts failed to assess existing substantial discrepancies in the witness statements and to reopen his case on the basis of newly discovered circumstances and that, by failing to do so, the State party violated his rights under article 14 (1), (2), (3) (e) and (5) of the Covenant.

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 takes note of the author's claim that his rights under article 14 (2) of the Covenant have been violated, because the court erred in sentencing the author for criminal acts that he did not commit and failed to reopen the case on the basis of newly discovered circumstances. In the absence of any other pertinent information in that respect on file, however, the Committee considers that the author has failed to sufficiently substantiate that claim for the purposes of admissibility. Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.4 The author also claims that his rights under article 14 (5) of the Covenant have been violated, because his conviction was not reviewed by a higher tribunal to adjudicate the newly discovered facts. The Committee, however, notes that the review panel of the Supreme Court did consider the author's appeal. Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that the author has sufficiently substantiated his remaining claims under article 14 (1) and (3) (e) of the Covenant for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its examination of the merits.

Consideration of the merits

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

7.2 The Committee takes note of the author's claims that the State party has violated his rights under article 14 (1) of the Covenant, given that national courts ignored the significant discrepancies in the statements of Belarusian witnesses, the falsification of which was

[14] The author notes that this witness statement was recorded on video.

[15] The author underlines that the policemen did not witness the fighting but filed police reports of witness accounts of the event.

confirmed by the Belarusian authorities. He alleges that the State party failed to ensure the participation of Belarusian witnesses at the court hearing, and that their statements were read out at the hearing and assessed on that basis, thereby allowing for the submission of falsified reports at the proceedings. The court's reliance on falsified statements against the author had a direct bearing on the decision of the court to convict him to 17 years' imprisonment for having caused the death of T.A.

7.3 The Committee takes note of the State party's observations that, on 5 September 2007, the Mangistau Regional Court sentenced the author to 17 years' imprisonment for violating articles 96 (2) (i), murder with hooligan motives, and 103 (2), intentional infliction of grievous harm to health, of the Criminal Code of Kazakhstan. The Committee also takes note of the State party's observations that, on 30 July 2005, in the Montazhnik recreation centre, the author and his friends engaged in a fight with other residents, including nationals of Belarus and Kazakhstan, as a result of which T.A. was killed and several other people sustained minor bodily injuries. The Committee notes that, according to the State party, two nationals of Belarus, G.A. and Y.V., were at the scene of the crime when they entered building N12 and saw the author with a knife in his hand and T.A., who was suffering from a stab wound, sitting in a chair and calling the author's name. The Committee takes note of the State party's observations that the author was the most active participant in the fighting, to which several witnesses testified.

7.4 Regarding the witness statements collected in Belarus, the Committee notes that the Supreme Court accepted them as valid, because the investigation was conducted by the Belarusian investigator, which was confirmed by his signatures on the witness reports.

7.5 The Committee notes that, in investigating the author's case, three investigators violated their national legislation, as a result of which: on 29 February 2008, the Aktau City Court sentenced M.A. to a suspended sentence of three years; on 29 August 2012, the Aktau City Court found the investigator, E.I., in violation of article 348 (3), forged evidence, of the Criminal Code and sentenced him to a suspended sentence of three years; following an investigation conducted by the competent Belarusian authorities, the Public Prosecutor of Belarus imposed a disciplinary reprimand on the investigator, P.D. From the materials on the file, the Committee notes that, in investigating the author's case, important evidential materials were destroyed and several witness statements were falsified, thereby adding to the complexity of investigating and adjudicating the case at the national level.

7.6 The Committee notes that article 14 of the Covenant guarantees procedural equality and fairness. The Committee recalls its jurisprudence according to which it is incumbent on the courts of States parties to review the facts and evidence in each case, or the application of domestic legislation, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.[16] The Committee notes that, following the author's conviction on 5 September 2007, the State party's judicial authorities established that three witness statements used as the basis for his conviction, namely, those of L.O., L.N. and Y.A., had been falsified.[17] The Committee also notes that the investigative authorities of the State party, acting jointly with the investigative authorities of Belarus, collected evidence suggesting that three other witness statements used as a basis of the author's conviction, namely, those of G.A., S.E. and Y.V., may also have been falsified.[18]

7.7 With regard to the author's claim that the State party has violated his rights under article 14 (1), the Committee notes that the author appealed to the Supreme Court requesting to have his case reopened in the light of the newly discovered circumstances, under article 471 of the Criminal Procedure Code. The Committee observes that, in its order of 22 May 2013 refusing to reopen the author's criminal case on the basis of the newly discovered circumstances, the Supreme Court indicated that the author's criminal conviction was based on the testimonies of the six aforementioned witnesses, acknowledged the falsification of three of those testimonies and refused to take into consideration evidence suggesting the

[16] General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 39; *Suleymanova and Israfilova v. Azerbaijan* (CCPR/C/133/D/3061/2017), paras 7.2.–7.3.; and *Manzano et al. v. Colombia* (CCPR/C/98/D/1616/2007), para. 6.4.

[17] Judgment of 29 August 2012 of the Court of Aktau in E.I.'s criminal case.

[18] Criminal indictment of E.I. by the Public Prosecutor's Office of Mangistau of 30 July 2012.

probable falsification of the remaining three. By doing so, the Supreme Court failed to draw relevant legal conclusions from the evidence of the irregularities brought before it. The allegations submitted by the author, and not rebutted by the State party, therefore meet the threshold established by the Committee of a manifest error or denial of justice. Consequently, the Committee considers that the facts of the case amount to a breach of the basic guarantees of a fair trial under article 14 (1) of the Covenant.

7.8 Regarding the author's claim under article 14 3 (e), the Committee notes that the author did not have a possibility to cross-examine several key witnesses whose testimony was essential for his defence, given that they were not present at the trial, but their statements were read out at the hearing. The Committee recalls that, according to its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, as an application of the principle of equality of arms, the right of accused persons to examine, or have examined, the witnesses against them, guaranteed by article 14 (3) (e) of the Covenant, is important for ensuring an effective defence by the accused and their counsel. Under this provision, the accused persons have a right to have witnesses admitted that are relevant for the defence and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.[19] The Committee observes that the author was not offered an opportunity to cross-examine several key witnesses whose statements were essential for his defence. The Committee therefore finds a violation of article 14 (3) (e) of the Covenant.

8. 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 article 14 (1) and (3) (e) of the Covenant.

9. In accordance with 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: (a) to conduct a new trial, subject to the principles of fair hearings and other procedural safeguards; and (b) to provide the author with adequate compensation. The State party is also under an obligation to take steps to prevent similar violations from occurring in the future

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.

[19] General comment No. 32 (2007), para. 39.