



# International Covenant on Civil and Political Rights

Distr.: General  
23 January 2024

Original: English

## Human Rights Committee

### Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2983/2017\*\*, \*\*\*

<i>Communication submitted by:</i>	A.S.V. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Date of communications:</i>	20 September 2016 (initial submission), 30 January 2017 (additional submission)
<i>References:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 23 May 2017
<i>Date of adoption of decision:</i>	31 October 2023
<i>Subject matter:</i>	Criminal conviction based on forced confession; lack of effective investigation into torture claims
<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Torture; forced confession; fair trial – legal assistance; effective remedy
<i>Articles of the Covenant:</i>	2 (3) (a), (b) and (c), 7, 9 and 14 (3) (b), (d), (e) and (g)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

#### Background

1. The author of the communication is A.S.V., a national of Kazakhstan, born in 1991. He claims that the State party has violated his rights guaranteed under articles 2 (3) (a), (b)

\* Reissued for technical reasons on 30 January 2024.

\*\* Adopted by the Committee at its 139th session (9 October–3 November 2023).

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



and (c),<sup>1</sup> 7, 9 and 14 (3) (b), (d), (e) and (g) of the Covenant. The Optional Protocol entered into force for the State party on 30 September 2009. The author is not represented.

### **Facts as submitted by the author**

2.1 On 7 February 2010, the author, Z.K (a woman aged 20) and E.D., Z.K.'s step-brother, spent time together drinking alcohol in the city of Uralsk. On the same day, Z.K. was found murdered.

2.2 On 8 February 2010, the author and E.D. were arrested in connection with the murder and the author was taken to a police station, where he was beaten up by five police officers. They hit him in his ribs, stomach, face and other body parts, but without leaving visible traces.<sup>2</sup> They also threatened to rape him if he did not confess to the murder of Z.K. Under such pressure, including the fear of rape, the author wrote four "full confessions" by hand under dictation, followed by self-incriminating oral testimony.<sup>3</sup> Each of the author's handwritten and oral testimonies differed slightly in describing the details of Z.K.'s murder, most notably the exact reason for the initial argument between the author and Z.K. After the author wrote his confessions, his State-appointed lawyer, V.M., countersigned the documents, merely observing in a conversation with the author that he should not have confessed.

2.3 On 8 and 9 February 2010, the author was examined by a forensic doctor, B.B., Director of the Centre for Forensic Medicine, West Kazakhstan branch of the Ministry of Health. B.B. was tasked with checking whether the author had any bodily injuries and, if any injuries were found, to clarify their location, the manner and time of their infliction and their severity. B.B. was likewise requested to determine whether the bodily injuries, should any be detected, corresponded to the time frames indicated in the investigator's decision to conduct a medical examination of the author.<sup>4</sup> According to the medical report, dated 9 February 2010, the author's health condition was "satisfactory" and he had a small abrasion on his right elbow, which had presumably been caused by a blunt instrument and might "correspond to the time frames indicated". The small abrasion was categorized as "mild bodily harm". No other bodily injuries were established.

2.4 During the investigation, the author was twice taken for crime scene examinations. The police officers showed him the location of the material evidence and how he had allegedly murdered Z.K. On the first visit, the material evidence (including bottle parts and a bottle neck) was not present at the crime scene. The material evidence only appeared there on the second visit, when it was collected and attached to the author's criminal case file.

2.5 On 8 February 2010, the author's dwellings were searched. A pair of jeans stained with oil was taken by the police, without being packed and sealed according to the procedural norms. Subsequently, the jeans were stained with blood from the same blood group as that of Z.K. At the same time, the author's outer clothing and winter shoes were clear of any trace of blood, which, according to the author, demonstrated that the evidence against him had been falsified by the police.

2.6 On 18 February 2010, another defence lawyer, T.A., was hired by the author's mother. The author and his chosen lawyer, T.A., submitted several complaints to the Prosecutor's Office and the police of West Kazakhstan regarding the use of torture by police officers, whom the author did not know by name but was able to identify; falsification of evidence; and the author's forced confession. At the request of the author's lawyer, on 11 March 2010, more than one month after he had been tortured, the author underwent another forensic medical examination by another forensic doctor, T.K., who also worked at the Centre for

---

<sup>1</sup> The author mistakenly claims that the State party violated his rights under article 2 (3) (d) of the Covenant, which does not exist. It transpires from the text of the author's arguments that he implies an alleged violation of article 2 (3) (c) of the Covenant instead.

<sup>2</sup> The author does not provide any further explanation.

<sup>3</sup> The supporting documents available on file demonstrate that the author's criminal case file materials contain only two written confessions regarding the murder of Z.K. (both dated 8 February 2010) and two other written confessions (dated 27 January and 9 February 2010) regarding the infliction of minor bodily harm to a certain M., a few days before the death of Z.K.

<sup>4</sup> The investigator's decision is not available on file.

Forensic Medicine, West Kazakhstan branch of the Ministry of Health. T.K. was instructed to check whether the author had any bodily injuries and, if any injuries were found, to clarify their location, nature, the manner and time of their infliction, and their severity. After examining the author for an unspecified period of time, T.K. detected no signs of bodily injury. In the meantime, the Office of the Prosecutor of West Kazakhstan did not examine the author's complaint about torture but forwarded it to the West Kazakhstan police for a pre-investigation check, that is to the same department where the police officers worked, who had mistreated the author. On 14 March 2010, the police refused to initiate criminal proceedings in the absence of *corpus delicti*. They claimed that the author had not previously complained about any pressure on their part and that the two forensic medical examinations of the author had not established any bodily injury, apart from a small abrasion on the right elbow. Several investigators and police officers of the department were questioned regarding the author's allegations of torture, but they categorically denied having used physical or psychological pressure on him, stating that the author had testified against himself voluntarily and in the presence of a lawyer. Based on the results of the pre-investigation check, on 14 May 2010, the Regional Prosecutor informed the author's lawyer that those issues could be raised in court.

2.7 On 21 June 2010, the author and E.D. were found guilty of having murdered Z.K. by a jury at the Regional Court for West Kazakhstan. In particular, the author was convicted under article 96 (2) (g) (murder committed by a group of persons or a group of persons who conspired together) and article 105 (infliction of minor bodily harm)<sup>5</sup> of the Criminal Code of the Republic of Kazakhstan,<sup>6</sup> and was sentenced to 19 years and 1 month of imprisonment in a strict-regime correctional colony. According to the verdict on the author, he and E.D. had an argument with Z.K., which became aggravated to the point that the author and E.D. kicked and beat Z.K. to death. According to the author, since the murder of Z.K., a young woman aged 20, was a high-profile case, the police struggled to close the investigation and report that the crime had been solved by all possible means, which explains why he was arrested and convicted within such a short time frame.

2.8 In their cassation appeals, the author and his lawyer complained about the mistreatment of the author by the police, with a view to extracting a confession, stating that the author's self-incriminating testimony was obtained under pressure. The author and his lawyer also challenged the assessment of the evidence on file by the trial court, most notably the collection and subsequent forensic examination of the author's jeans, which allegedly showed traces of Z.K.'s blood. On 19 August 2010, the Cassation Board of the Court of West Kazakhstan pronounced its verdict, in which it quashed the author's conviction under article 105 of the Criminal Code for procedural reasons, but did not consider the arguments of the author and his lawyer about the mistreatment and falsification of evidence.<sup>7</sup>

2.9 On 15 November 2010, the Supreme Court rejected the motion of the author's lawyer to initiate a supervisory review of the author's case. The Supreme Court stated that the arguments of the author's lawyer had already been examined by the cassation court in their entirety.

2.10 On 9 March 2011, the Office of the Prosecutor General of Kazakhstan dismissed the complaint of the author's lawyer that the judicial decisions against the author were groundless. In its response, the Office of the Prosecutor General indicated that the author's guilt had been established in a court of law, that the lawyer's arguments were largely unfounded and that the evidence on file had been fully examined and verified by both the jury and the court.

2.11 The author claims that he has exhausted all available domestic remedies. He also states that the same matter has not been examined under another procedure of international investigation or settlement.

---

<sup>5</sup> The author was convicted under article 105 for inflicting minor bodily harm to M.

<sup>6</sup> In force at the time.

<sup>7</sup> The court retained the author's conviction under article 96 (2) of the Criminal Code.

## Complaint

3.1 The author claims a violation of articles 2 (3) (a), (b) and (c), 7, 9 and 14 (3) (b), (d), (e) and (g) of the Covenant.<sup>8</sup>

3.2 The author argues that his and his lawyer's complaints about his mistreatment by the police were not duly investigated and that the trial court and the court of cassation failed to take into account such complaints, which reveals a violation by the State party of its obligations under article 2 (3) (a), (b) and (c) of the Covenant.

3.3 The author also submits that he was subjected to torture by police officers, with a view to forcing him to confess to a crime that he had not committed, in violation of articles 7 and 14 (3) (g) of the Covenant.

3.4 The author further claims that he was deprived of legal assistance when he was arrested, contrary to article 14 (3) (d) of the Covenant.<sup>9</sup> The author also alleges a violation by the State party's courts and investigative authorities of articles 14 (3) (b) and (e) of the Covenant during his criminal proceedings, without providing further details.

3.5 In the light of the foregoing, the author requests the Committee to call on the State party to remedy its violations by taking all necessary measures, with a view to quashing his conviction and taking action against those responsible for his guilty verdict.

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

4.1 In a note verbale, dated 4 December 2017, the State party submitted its observations on the admissibility and merits of the communication. The State party submits that the author's claims under articles 7 and 14 (3) (g) of the Covenant should be declared inadmissible under article 3 of the Optional Protocol to the Covenant for being incompatible with the provisions of the Covenant, and rule 96 (b) and (f) of the rules of procedure of the Human Rights Committee in force at the time of the submission of the State party's observations, for being insufficiently substantiated and for the author's failure to exhaust all available domestic remedies.<sup>10</sup> The State party also argues that the author's claims under articles 2 (3) (a) and (b) and 14 (3) (b), (d) and (e) of the Covenant should likewise be declared inadmissible under rule 96 (b) of the rules of procedure of the Human Rights Committee, since these claims are insufficiently substantiated.<sup>11</sup>

4.2 The State party recalls the details of the author's criminal case during both the pretrial investigation and the trial itself. The State party notes that on 19 August 2010, the Cassation Board of the Court of West Kazakhstan quashed the author's conviction under article 105 of the Criminal Code without establishing any legal basis for changing or annulling the author's conviction under article 96 (2) (g) of the Code. The State party submits that the author's lawyer did not request an examination of any additional evidence, nor did he complain about the infringement of the author's rights, either in the court of first instance or in the court of cassation. Likewise, the State party recalls that on 15 November 2010, the Supreme Court rejected the lawyer's motion to initiate a supervisory review. The State party also notes that on 20 December 2010, the Supreme Court rejected the author's own motion for a supervisory review.

4.3 The State party further indicates that on 5 December 2016, the Supreme Court rejected the author's motion for a judicial review of his case in the cassation instance, owing to the absence of any legal grounds. In that motion, the author argued, *inter alia*, that the evidence

---

<sup>8</sup> In his initial communication, the author also claimed a violation of articles 13 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In his additional submission dated 30 January 2017, the author stated that his communication should be examined only under the Covenant.

<sup>9</sup> The author refers to paras. 5–8 and 21 of the Basic Principles on the Role of Lawyers.

<sup>10</sup> See [CCPR/C/3/Rev.10](#). All subsequent mentions of the rules of procedure of the Committee refer to [CCPR/C/3/Rev.10](#).

<sup>11</sup> The State party's observations on the admissibility and merits do not address the author's claim under article 2 (3) (c) of the Covenant.

in his case had been falsified, which was dismissed as proven otherwise by the courts of both the first and cassation instances.

4.4 The State party further recalls the circumstances of the murder of Z.K., as described in the author's verdict, and submits that the author's guilt was fully proven by the following evidence: the murder weapons found at the crime scene, including the bottle neck that had the author's palm print on it; the author's jeans with traces of Z.K.'s blood on them; and the testimony of E.D. The State party also notes that in his written confessions, the author did not indicate that he had been pressured by the police, nor does the audio recording of the author's oral testimony reveal any signs of outside pressure or violence. The State party likewise challenges the testimony by the author's mother, who claimed that the author was at home when Z.K. was murdered, since it contradicts, and/or is not corroborated by, the testimony of other witnesses on file. The State party emphasizes that, contrary to the author's claims, no falsification of the material evidence was possible, since the investigative authorities never had access to the body of Z.K. for the duration of the investigation.

4.5 The State party recalls that, at the request of the author's lawyer, the West Kazakhstan police carried out a pre-investigation check into the author's allegations of torture and a second forensic medical examination of the author. Since the pre-investigation check did not establish *corpus delicti* in the actions of the police officers, the West Kazakhstan police refused to initiate criminal proceedings. The State party notes that the author and his lawyer could have appealed against that refusal before the domestic courts under article 109 (1) of the Code of Criminal Procedure in force at that time, but failed to do so. According to the State party, by waiving their right to appeal against the decision of the police, the author and his lawyer recognized that decision as lawful and reasonable. The State party further indicates that the author and his lawyer did not appeal against the ruling of the Uralsk City Court, dated 11 February 2010, to apply to the author a measure of restraint in the form of detention, in accordance with article 110 of the Code of Criminal Procedure, nor did they appeal against the ruling of the Uralsk City Court, dated 3 April 2010, to extend the period of the author's detention for three months. The State party contends that the waiver of the right to appeal against the author's arrest likewise demonstrated his and his lawyer's consent to the conclusions of the court. Similarly, the State party indicates that during the hearings regarding the author's measure of restraint, neither the author nor his lawyer claimed that the evidence already available on file, which the author contests in his communication, had been obtained unlawfully. The State party also indicates that the author's communication does not contain any justification for his failing to appeal against the decision of the West Kazakhstan police and the ruling of the Uralsk City Court, nor does the communication clarify why the author admitted his guilt during the hearing at the Uralsk City Court on 11 February 2010, without complaining about being tortured. The State party concludes that, as far as the alleged violations of articles 7 and 14 (3) (g) of the Covenant are concerned, the communication should be declared inadmissible for being incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol, and for being insufficiently substantiated. The State party also concludes that the author has not exhausted all available domestic remedies under rule 96 (b) and (f) of the rules of procedure of the Human Rights Committee.

4.6 The State party further explains that, after the author was recognized as a suspect on 9 February 2010, he was informed about his procedural rights, after which he filed a request to testify in the Russian language and be assisted by a defence lawyer. Since no defence lawyer was appointed by the author at the time, he was provided with a State-appointed lawyer, in accordance with article 71 (3) of the Code of Criminal Procedure. On 9 February 2010, V.M., a member of the West Kazakhstan bar, was appointed to represent the author's interests in the criminal case against him. On 18 February 2010, based on a written agreement on legal representation, T.A., also a member of the West Kazakhstan bar, was appointed to represent the author. T.A. then represented the author until the conclusion of the proceedings. The State party emphasizes that all investigative actions during the pretrial investigation were conducted in the presence of the author and his defence lawyers, V.M. or T.A., and that the court hearings were carried out with the direct participation of the author and T.A., the lawyer of his own choosing. Considering the foregoing, the State party argues that, as far as the alleged violations of articles 2 (3) (a) and (b) and 14 (3) (b), (d) and (e) of the Covenant are concerned, the communication should be declared inadmissible for being insufficiently substantiated under rule 96 (b) of the rules of procedure of the Human Rights Committee.

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

5.1 On 10 July 2018, the author submitted comments on the State party's observations on admissibility and the merits. In his comments, the author contends that the State party's observations are not based on the law, or on the factual circumstances, or on the materials on file in relation to his criminal case, and that the State party's observations are designed to justify the actions of the police officers who falsified the evidence in his case.

5.2 The author points out that the State party's observations largely cite the court decisions against him, which, according to the author, demonstrates that the State party's competent authorities did not conduct an analytical examination of his communication. The author also notes that when the judge of the Supreme Court rejected his motion for a judicial review of his case on 5 December 2016, she did not actually review that motion, nor did she obtain the author's case file for examination or state her reasons for dismissing the author's arguments.

5.3 The author further reiterates his arguments against the material evidence of his guilt. In particular, the author argues that all court decisions and the materials on file in relation to his case indicate that he consumed alcohol in the company of other persons, although he was never examined as to whether he had been in a state of alcoholic intoxication.

5.4 With regard to the State party's argument that the author has not exhausted all available domestic remedies, in particular that he did not appeal against the decision of the West Kazakhstan police to refuse to initiate criminal proceedings into his allegations of torture, the author submits that an appeal against that decision would have had no reasonable prospect of success.

**Issues and proceedings before the Committee***Consideration of admissibility*

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

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the author's claim that the State party violated article 2 (3) (a), (b) and (c) of the Covenant, owing to its failure to conduct an investigation into his complaints and the admission by the courts into evidence of his confession that was obtained under pressure. The Committee recalls its jurisprudence, which indicates that the provisions of article 2 of the Covenant lay down general obligations for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.<sup>12</sup> The Committee thus considers that the author's claims under article 2 of the Covenant are inadmissible under article 3 of the Optional Protocol.

6.4 The Committee takes note of the author's claims, under articles 7 and 14 (3) (g) of the Covenant, that he was threatened and subjected to beatings by the police and was forced to confess to a crime that he had not committed. In that regard, the Committee observes that the results of the forensic medical examination of the author, which was carried out the day after the alleged torture, are not indicative of beatings or any other form of ill-treatment or torture. The Committee also notes the State party's argument that neither the author nor his lawyer claimed that the author's confession had been obtained under pressure during the pretrial hearings. The Committee further notes the State party's assertion that the West Kazakhstan police carried out a pre-investigation check into the author's allegations of torture, during which several investigators and police officers of the department allegedly responsible for the author's torture were interrogated and categorically denied exerting any pressure on him. Likewise, at the request of the author's lawyer, the police ordered a second forensic medical examination of the author, which did not establish that there were any bodily injuries. The

---

<sup>12</sup> *K.E.R. v. Canada* (CCPR/C/120/D/2196/2012), para. 7.8.

author's allegations of torture also formed part of the cassation appeal considered by the Cassation Board of the Court of West Kazakhstan and were later reviewed by the Office of the Prosecutor General, which did not find the author's claims to be substantiated. The Committee further observes the State party's argument that the author's guilt was confirmed, not only by his confession but also by other evidence, including the testimony of the author's accomplice, E.D., and the material evidence. The Committee finally notes that the author's guilt was established by the jury, whose impartiality has not been questioned by the author. Therefore, and in the absence of other evidence in support of the author's claims, the Committee concludes that the author has failed to sufficiently substantiate his claim of ill-treatment and forced confession for the purposes of admissibility, and declares those claims inadmissible under article 2 of the Optional Protocol.

6.5 With regard to the author's claim under 14 (3) (d) of the Covenant, notably that he was deprived of legal assistance when he was arrested, the Committee notes the State party's argument that on 9 February 2010, the same day that the author was arrested, V.M. was appointed as the author's defence lawyer, since the author had not yet appointed a defence lawyer of his own choosing. On 18 February 2010, T.A., who had been hired by the author's mother, was appointed to the author's case and represented him until the conclusion of the criminal proceedings. The Committee observes the State party's further clarification, which is not contested by the author, that all investigative actions during the pretrial investigation were conducted in the presence of the author and one or other of his defence lawyers, and that the court hearings took place with the direct participation of the author and the lawyer of his own choosing. Therefore, considering the absence of other arguments in support of the author's claim, the Committee concludes that the author's claim under article 14 (3) (d) of the Covenant has not been sufficiently substantiated for the purposes of admissibility. Accordingly, the Committee declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.6 Regarding the author's remaining claims that during the criminal proceedings against him, the State party also violated his rights under article 14 (3) (b) and (e) of the Covenant, the Committee notes that the author has not provided sufficient details in substantiation of his claims under article 14 (3) (b) and (e). In the absence of any further pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate the above-mentioned allegations for the purposes of admissibility. Therefore, the Committee declares these claims inadmissible under article 2 of the Optional Protocol.

6.7 Regarding the author's claims under articles 7 and 14 (3) (g) of the Covenant, the Committee considers that these claims should also be declared inadmissible for being incompatible with the provisions of the Covenant owing to non-exhaustion by the author of all available domestic remedies, pursuant to article 3 of the Optional Protocol to the Covenant and rule 96 (f) of the rules of procedure of the Human Rights Committee.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) That the decision shall be transmitted to the State party and to the author.