



# 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. 2866/2016\*, \*\*

<i>Communication submitted by:</i>	Banyusha Khalykovna Rezazade (represented by counsel, Rysbek Adamaliyev, of Human Rights Protection Centre “Kylm Shamy”)
<i>Alleged victim:</i>	Firuzkhan Fiziyeu (deceased)
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	23 June 2016 (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 23 November 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	6 November 2020
<i>Subject matter:</i>	Torture and death in police custody
<i>Procedural issue:</i>	Substantiation of claims
<i>Substantive issues:</i>	Right to life; prohibition of torture; right to an effective remedy
<i>Articles of the Covenant:</i>	2 (3), 6 (1) and 7
<i>Article of the Optional Protocol:</i>	2

1. The author is Banyusha Khalykovna Rezazade, sister of the deceased, Firuzkhan Fiziyeu, born in 1976. She claims that Kyrgyzstan violated her brother’s rights under articles 6 and 7, read alone and in conjunction with article 2 (3), of the Covenant. The Optional Protocol entered into force for Kyrgyzstan on 7 January 1995. The author is represented by counsel.

#### Facts as submitted by the author

2.1 On 29 July 2011, Mr. Fiziyeu, his friend U.I. and the friend’s son U.T. were arrested by the officers of the State Committee for National Security when they tried to escape a search being undertaken in the office of Mr. Fiziyeu. U.I. and U.T. were taken to the office

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

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, Bamariam Koita, David H. Moore, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



of the State Committee in Bishkek at approximately 12 a.m. on 30 July 2011. They claim to have been beaten by State Committee officers. They saw Mr. Fiziyeu being brought to the building at approximately 12.20 a.m. According to them, Mr. Fiziyeu was beaten by the officers when taken out of a van and then he walked to the building. They later heard his screams of pain coming from one of the offices. At a certain point later that morning, the screaming stopped. When the ambulance arrived at the State Committee office on the morning of 30 July 2011, Mr. Fiziyeu was dead.

2.2 On 30 July 2011, the city police department ordered a forensic examination of Mr. Fiziyeu's body. The results of the examination, finalized on 9 September 2011, indicated that the victim died of traumatic shock caused by multiple injuries, fractures, broken ribs and bones.<sup>1</sup>

2.3 On 31 July 2011, the author filed a complaint with the Bishkek city prosecutor's office, requesting the opening of a criminal investigation. An investigation was opened on 9 August 2011. On 14 December 2011, State Committee for National Security officers K. and B., who arrested Mr. Fiziyeu and delivered him to the State Committee office, were indicted under articles 104 (4) (intentional infliction of grave damage to health, resulting in victim's death through carelessness), 305 (2) (exceeding official powers with the use of a weapon or special means, entailing grave consequences) and 305-1 (torture) of the Criminal Code. The investigation indicated that the arresting officers applied excessive force and beat Mr. Fiziyeu during the apprehension and that he died as a result. On 20 November 2013, the officers were acquitted of all charges by the Military Court of Bishkek. The Military Court relied on a forensic report of 9 September 2011, which stated that with the injuries in question, any independent movement by Mr. Fiziyeu, including walking, would have been impossible. The Court also referred to the witness statements of U.I. and U.T., who had seen Mr. Fiziyeu walking on his own when he was brought to the State Committee building. The Military Court found that the evidence was insufficient to establish the guilt of the two officers and sent the criminal case back to the Prosecutor General's Office for further investigation and identification of the perpetrator.

2.4 On 23 December 2013, the author sent a request for further investigation to the Prosecutor General's Office. She indicated that she would not appeal the acquittal by the Military Court since she did not believe officers K. and B. were guilty. Witnesses U.I. and U.T. indicated that they had been beaten by some 15 people, none of whom were identified by the investigation. On 22 January 2014, a non-governmental organization, "Kylym Shamy", filed a similar request to the Prosecutor General's Office. On 17 February 2014, they were informed that on 25 November 2013, the Prosecutor General's Office submitted an appeal to the Military Court of Kyrgyzstan and that the guilt of officers K. and B. had not yet been established.

2.5 On 11 June 2014, the Military Court of Kyrgyzstan maintained the decision of the Military Court of Bishkek acquitting officers K. and B. The Prosecutor General's Office submitted a request for a supervisory review to the Supreme Court. On 26 August 2014, the Supreme Court quashed the decisions of the lower courts and sent the case back to the Military Court to be considered by a different set of judges. Since all the judges of the Military Court had been involved in the consideration of the case previously, the case was transferred to the Regional Court in Chuysk. On 13 May 2015, the Regional Court confirmed

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<sup>1</sup> The forensic report noted, among other injuries:

- (a) Multiple bite wounds on the left leg and right foot, which could have been caused by hard blunt objects with a limited contact surface, e.g., the teeth of a dog;
- (b) Fractures of the left scapula, bruises and abrasions on the back, caused by a hard blunt object;
- (c) Fractures of the ribs and sternum, haemorrhage in the lungs and ligamentous apparatus of the liver, tract ligament and intestinal mesentery, and perirenal tissue on the right, with subcapsular haemorrhages of the right kidney, which could be caused by blunt solid objects;
- (d) Subarachnoid haemorrhages with contusion of the parietal lobes of the brain, haemorrhages of the fronto-parietal-temporal regions, a contused wound on the back of the neck, and an abrasion of the face that could have been caused by blunt solid objects.

the decision of the Military Court of Bishkek and acquitted officers K. and B. The Prosecutor General's appeal to the Supreme Court was dismissed on 17 August 2015.

### **Complaint**

3.1 The author claims that the death of her brother in detention and under the control of officers of the State Committee for National Security violated article 6 (1) of the Covenant. She claims that the perpetrators have not been identified and that no one was held responsible, in violation of article 6 (1), in conjunction with article 2 (3), of the Covenant.

3.2 She claims that her brother died from being beaten and from the injuries inflicted by more than 10 officers of the State Committee for National Security, which amounts to a violation of article 7 of the Covenant. The State party failed to prevent torture and failed to carry out a thorough, effective and independent investigation thereof in violation of article 7, read in conjunction with article 2 (3), of the Covenant.

3.3 The author asks the Committee to:

- (a) Find a violation of the above-mentioned articles;
- (b) Urge the State party to carry out a prompt, thorough and effective investigation of the torture and ensuing death of Mr. Fiziyeu, and prosecute those responsible;
- (c) Provide the family of the victim with adequate compensation;
- (d) Urge the State party to prevent similar violations from occurring in the future and to also urge it to establish an independent mechanism for the investigation of torture.

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

4.1 In a note verbale dated 19 October 2018, the State party submitted its observations. According to the State party, Mr. Fiziyeu was apprehended on 29 July 2011, while trying to escape from the State Committee for National Security, who were carrying out a search in his office within an open criminal investigation under article 241 (2) of the Criminal Code (illegal acquisition, transfer, sale, storage, transportation or carrying of firearms, ammunition, explosives and explosive devices). When officers K. and B. found him, Mr. Fiziyeu jumped from the roof of a barn and was caught by a service dog who bit him on the left leg. Mr. Fiziyeu was arrested and taken to the State Committee office at approximately 4.30 a.m. on 30 July 2011. He was questioned there by officers Ch., S. and other unidentified officers. During the questioning, he felt unwell. An ambulance arrived and recorded his death at approximately 5.30 a.m.

4.2 The State party lists the injuries of Mr. Fiziyeu, recorded in the forensic reports, and provides information on the prosecution of officers K. and B. (criminal investigation No. 150-11-72) and the judicial proceedings in their case.

4.3 According to the State party, on 27 December 2011, a separate criminal investigation (No. 150-11-127) was opened into the following: the fact that Mr. Fiziyeu's dental prosthesis was found in office No. 2 of the State Committee for National Security; the lawfulness of detention of U.I. and U.T., forcing them to provide false evidence and resulting in injuries to them by State Committee officers; and allegations of the torture of Mr. Fiziyeu. On 27 February 2012, this investigation was suspended, given the impossibility of identifying any suspects.

4.4 On 2 October 2015, after the finalization of judicial proceedings in case No. 150-11-72, the investigation in both cases was reopened and transmitted to the Military prosecutor's office for identification of perpetrators. On 2 and 19 December 2015, both investigations were suspended, as no suspect could be identified. On 21 February 2017, the Prosecutor General's Office ordered the reopening of the investigations. Currently, the investigations are being carried out by the Military prosecutor's office. Officers K. and B. have been prosecuted and acquitted by the courts. As a result, the author's claim that no one was held responsible for the death of her brother is groundless.

4.5 On 30 November 2018, the State party resubmitted its original observations on admissibility and the merits, accompanied by the court decisions concerning officers K. and B.

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

5.1 On 22 October 2018, the author provided her comments on the observations of the State party. She submits that the detailed chronology of events and the results of the forensic reports referred to by the State party only reinforce her claims that the injuries suffered by Mr. Fiziyeve were inflicted in the building of the State Committee for National Security and caused his death. The State party also confirms that there was not enough evidence to prove that officers K. and B. were guilty of beating Mr. Fiziyeve. However, since their acquittal, no further measures have been taken to identify the perpetrators.

5.2 The information provided by the State party about the two investigations does not indicate any result achieved. Three years have passed since the adoption of the final judgment acquitting officers K. and B.; however, no perpetrator has been identified and held responsible. The victim died in the premises of the State Committee for National Security, under the control of State Committee officers. Nevertheless, the prosecutors did not question the management of the State Committee units under whose jurisdiction the torture took place.

5.3 On 1 November 2018, the author's lawyer filed yet another request for further investigation with the Prosecutor General's Office. In a letter dated 21 November 2018, the Prosecutor General's Office responded that the investigation had been suspended on 28 March 2017 owing to the failure to identify a person subject to prosecution and that investigative measures were being taken to identify perpetrators.

5.4 The author expresses fear that the observations of the State party only confirm that there will be no effective investigation of the victim's death and prosecution of the perpetrators.

5.5 On 12 March 2019, the author reiterated her claims on the lack of effective investigation of her brother's torture and death. She claims that the State party's inaction deprives her of effective remedies, because civil claim for compensation against civil servants can only be made within the framework of criminal prosecution. The author claims to have exhausted all effective remedies available to her.

#### **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 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 considers that the author has sufficiently substantiated the claims under articles 6 and 7, read alone and in conjunction with article 2 (3), of the Covenant for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

##### *Consideration of the merits*

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 Mr. Fiziyeu died on 30 July 2011 as a result of multiple injuries inflicted by officers of the State Committee for National Security, after his arrest on the night of 29 July 2011. The State party claims that Mr. Fiziyeu was injured during apprehension, when he jumped from the roof, was caught by a service dog and then beaten by officers K. and B. The Committee notes that the forensic medical examinations performed on Mr. Fiziyeu's body, finalized in a forensic report dated 9 September 2011, indicated traumatic shock, numerous wounds, haemorrhages and several broken ribs and bones as the cause of death, possibly caused by blunt solid objects. The same forensic report indicated that any independent movement by Mr. Fiziyeu would be impossible with such injuries. The Committee notes that the State party does not contest the results of the above-mentioned forensic report. However, the State party does not address, in that regard, the author's submission that her brother was seen walking to the State Committee facility on his own, a fact that was confirmed by at least two eye witnesses and that seems incompatible with the conclusion, as reflected in the forensic report that, under the circumstances, any independent movement, including walking, would have been impossible for Mr. Fiziyeu. Neither does the State party explain why the author's brother was taken to the State Committee facility and interrogated there, if he had been injured to such an extent during apprehension, without being urgently provided with medical assistance and without any record taken by State Committee officers of his condition. The Committee refers to paragraph 25 of its general comment No. 36 (2018) on the right to life, according to which the States parties have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by depriving individuals of their liberty, States parties assume the responsibility to care for their lives and bodily integrity.

7.3 In the present case, the State party refers to the results of the investigations according to which Mr. Fiziyeu's injuries were inflicted during his apprehension. It then concludes that the guilt of the two arresting officers could not be proven in domestic courts. It therefore remains unclear from the State party's observations how and by whom Mr. Fiziyeu was so badly injured. At the same time, the State party does not deny that the author's brother died in the custody of the State Committee for National Security from the injuries inflicted by unidentified State officers and after having been interrogated by them. In that regard, the Committee notes that the State party did not address the author's claim that her brother's screams of pain were heard by at least two witnesses in the State Committee facility from the time of his arrival, at approximately 12.20 a.m. on 30 July 2011, until later that morning. In the light of the detailed information provided by the author and in absence of clear arguments from the State party to rebut the author's claims, the Committee accepts the author's allegations that her brother died in the State Committee facility from the injuries inflicted by State officers. Accordingly, the Committee considers that the facts as submitted reveal a violation of Mr. Fiziyeu's rights under articles 6 (1) and 7 of the Covenant.

7.4 The Committee notes the author's claim that the torture and death of her brother have not been properly investigated and that no one has been held responsible. The Committee recalls its jurisprudence, according to which States parties, by arresting and detaining individuals, take responsibility to care for their lives,<sup>2</sup> and that criminal investigation and subsequent prosecution are necessary remedies for violations of human rights, such as those protected by article 6 of the Covenant.<sup>3</sup> The Committee also recalls its general comments No. 31 and No. 36, in which it stated that, where investigations reveal violations of certain Covenant rights, such as those protected under articles 6 and 7, States parties must ensure that those responsible are brought to justice.<sup>4</sup> Although the obligation to bring to justice those

<sup>2</sup> *Lantsova v. Russian Federation* (CCPR/C/74/D/763/1997), para. 9.2; *Boboev v. Tajikistan* (CCPR/C/120/D/2173/2012), para. 9.3; and Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 25.

<sup>3</sup> *Sathasivam and Saraswathi v. Sri Lanka* (CCPR/C/93/D/1436/2005), para. 6.4; *Umetaliev and Tashanbekova v. Kyrgyzstan* (CCPR/C/94/D/1275/2004), para. 9.2; and *Boboev v. Tajikistan*, para. 9.3. See also the Minnesota Protocol on the Investigation of Potentially Unlawful Death, para. 17.

<sup>4</sup> Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 18; and Human Rights Committee, general comment No. 36, para. 27.

responsible for a violation of articles 6 and 7 is an obligation of means, and not of result,<sup>5</sup> States parties have a duty to investigate, in good faith and in a prompt and thorough manner, all allegations of serious violations of the Covenant that are made against them and their authorities, including those related to torture.

7.5 The Committee notes that the domestic authorities did not deny that Mr. Fiziyev had been beaten and had died in the premises of the State Committee for National Security as a result of the injuries suffered. Two officers were identified by the investigation as suspects and brought to court. They were ultimately acquitted for lack of evidence, and the courts ordered the Prosecutor General's Office to resume the investigation and identify those responsible. The Committee notes that the final court decision acquitting officers K. and B. dates back to 17 August 2015. Since then, despite several requests for investigation, namely the request submitted to the Prosecutor General's Office by the author, no one has been identified as a possible perpetrator. The Committee notes that the State party provided, in this regard, very general information on dates of the opening of investigations, their suspension and subsequent reopening. It provided, however, no details concerning any specific steps undertaken within the framework of the investigation or explained why it was impossible to identify suspects of the crime despite availability of witness statements and known identities of some of the officers who questioned Mr. Fiziyev after his arrival at the State Committee office in Bishkek.

7.6 In the light of the above considerations, the Committee concludes that the State party failed to launch a prompt, impartial and effective investigation into the circumstances of the torture and death of the author's brother. The Committee considers that the State party has not provided an effective remedy for the violations of the rights of Mr. Fiziyev under articles 6 (1) and 7, read alone and in conjunction with article 2 (3), 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 articles 6 (1) and 7, read alone and in conjunction with article 2 (3), of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps to: (a) conduct a prompt, effective, thorough, independent, impartial and transparent investigation by an independent mechanism into the torture and death of the author's brother, and prosecute and punish those responsible; (b) keep the author informed regularly about the progress of the investigation; and (c) provide the author with adequate compensation for the suffering she endured in connection with the violations of her brother's rights. The State party is also under an obligation to take all steps necessary 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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective 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 present 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.

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<sup>5</sup> *Prutina et al. v. Bosnia and Herzegovina* (CCPR/C/107/D/1917/2009, 1918/2009, 1925/2009 and 1953/2010), para. 9.5; and *Boboev v. Tajikistan*, para. 9.3.