



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. 2429/2014*, **

<i>Communication submitted by:</i>	Kurmanbek Chynybekov (represented by counsel, Utkir Djabbarov)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	20 December 2012 (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 20 June 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	30 October 2020
<i>Subject matter:</i>	Torture; arbitrary detention
<i>Procedural issue:</i>	None
<i>Substantive issues:</i>	Torture; lack of effective investigation; arbitrary detention; presumption of innocence
<i>Articles of the Covenant:</i>	7, read alone and in conjunction with 2 (2) and (3) (a), 9 (1), (3) and (4), 10 (1) and 14 (2) and (3) (g)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Kurmanbek Chynybekov, a national of Kyrgyzstan born in 1980. He claims that the State party has violated his rights under article 7, read alone and in conjunction with article 2 (2) and (3) (a), and articles 9 (1), (3) and (4), 10 (1) and 14 (2) and (3) (g) of the Covenant. The Optional Protocol entered into force for the State party on 7 January 1995. The author is represented by counsel.

Facts as submitted by the author

2.1 On 22 April 2007, at 11 a.m., the author was arrested by police officers of the Aksiy district police department on suspicion of cattle theft. Upon his arrest, he voluntarily

* 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: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christoph Heyns, Marcia V.J. Kran, 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.



confessed to stealing, together with an accomplice, a cow on 17 April 2007. While at the Aksiy district police station, he was subjected to beatings by four police officers for refusing to confess to several more cattle thefts that had taken place in the area earlier. First, the officers took the author to the office of investigator B., where they handcuffed his hands behind his back and punched him several times in the head, then put a plastic bag over his head, which made the author suffocate. After he lost consciousness and fell to the ground, the officers kicked him in his stomach and kidneys. Then, the author was taken to the police station's gym, where the officers continued punching and kicking him and beating his feet with batons. One of the officers, D., then gave the author a hot chilli and forced him to chew it. After this, the author was taken to another room near the investigator's office, where the officers took off his trousers, put him in a crouched position with a plastic bag on his head, tied his feet and hands and inserted a metal object in his anus, which caused the author to lose consciousness again. Unable to bear the pain, the author confessed to six instances of cattle theft.

2.2 On 23 April 2007, the police invited a television crew to the police station and made the author confess to all six instances of cattle theft on camera. A week later, a programme containing the author's confession was aired on national television.

2.3 On 25 April 2007, the author was officially charged with all of the crimes to which he had confessed. The charges were based only on his confession. On the same day, the Aksiy district prosecutor ordered the author's pretrial detention for two months.

2.4 On 26 April 2007, the Aksiy district *akim* (mayor) sent a letter to the Aksiy district prosecutor in which he stated that he wanted to see more cases of cattle theft solved by the district prosecutor's office, that the author and his accomplice should receive appropriate punishment and that he would be personally monitoring the author's case.

2.5 On 25 April 2007, in a meeting with his brother, the author told him that he had been tortured and forced to confess to crimes that he had not committed. He told his brother that because he was afraid to report the torture and forced confession while in detention, he was going to speak out about the torture during the trial.

2.6 On 26 April 2007, the author's brother contacted the local human rights non-governmental organization, Hope and Peace, to request legal aid. On the same day, the non-governmental organization submitted a complaint to the Aksiy district prosecutor about the torture suffered by the author on 22 April 2007. Again on the same day, the Aksiy district prosecutor's office initiated an inquiry into the author's allegations. Upon learning this, the police officers of the Aksiy district police department again subjected the author to further beatings, warning him that if he did not deny any ill-treatment to the prosecutor's office, he would suffer the consequences. On 27 April 2007, the author was questioned by the deputy district prosecutor about his allegations and asked to undergo a forensic medical examination. However, since he was afraid of repercussions from the police, he denied having been tortured, refused to undergo a forensic medical examination and attributed his injuries to a fall from a horse. On 4 May 2007, the deputy district prosecutor refused to open a criminal investigation for lack of a crime.

2.7 As a result of the beatings, the author experienced acute pain in his kidneys. At the beginning of May 2007, he was able to send out several notes to his brother, describing his pain and naming the police officers responsible for his injuries. On 18 May 2007, because of the pain in his kidneys, an ambulance was called for the author. The paramedic advised the detention facility personnel to conduct an ultrasound of the author's kidneys and urine tests. However, none of the tests were performed.

2.8 On 31 May and 1 June 2007, the author's lawyer submitted motions to the Aksiy district prosecutor asking for an urgent medical examination and hospitalization of the author due to the injuries that he had sustained as a result of the torture. On 1 June 2007, the author was examined at the Aksiy district hospital where he was diagnosed with soft tissue bruises on his forearms, head and body, and injuries to his kidneys that could have been caused by a blunt object. Despite the doctors' recommendation to hospitalize the author for treatment, he was taken back to the detention facility.

2.9 On 6 June 2007, the author's lawyer submitted another complaint to the Aksiy district prosecutor detailing the torture that the author had suffered at the hands of the police. Together with the complaint, the lawyer submitted the results of the author's medical examination, an affidavit signed by the author's cellmate who had witnessed his suffering and copies of the notes that the author had been able to send to his brother from detention. The lawyer submitted another complaint to the Aksiy district prosecutor on 7 June 2007. On 15 June 2007, the Aksiy assistant district prosecutor refused to open a criminal investigation because there was no evidence that the injuries had been caused by the police and the author himself had previously denied having been tortured. The refusal was based on the author's own testimony given on 27 April 2007 and the explanations given by three of the four police officers whom the author had accused of having tortured him.

2.10 On 12 June 2007, following the author's appeal, the Aksiy district court released the author from pretrial detention. However, half an hour later, under pressure from victims of the alleged crimes, the judge revoked his own decision and ordered the author to be placed in pretrial detention. On 13 June 2007, the author's lawyer appealed the decision of the Aksiy district court and complained about the actions of the judge to the Chair of the Jalalabad regional court. On 14 June 2007, the author was transferred to the Aksiy district hospital for treatment. On 25 June 2007, the author was released from hospital pending trial.

2.11 On 31 July 2007, the Aksiy district court found the author guilty of one count of cattle theft and fined him.

2.12 On 9 August 2007, the author appealed, to the Aksiy district court, the decision of the Aksiy assistant district prosecutor dated 15 June 2007 not to open a criminal investigation. On 20 August 2007, the Aksiy district court denied the author's appeal. According to the court's ruling, there was no evidence of torture because the police officers had denied having tortured the author and the author himself had attributed his injuries to a fall from a horse. On 30 August 2007, the author appealed the ruling to the Jalalabad regional court. On 1 October 2007, the Jalalabad regional court upheld the decision of the district court. On 6 February 2008, the Supreme Court of Kyrgyzstan confirmed the rulings of the lower courts.

2.13 The author submits that he has exhausted all available domestic remedies.

Complaint

3.1 The author claims that he has suffered torture and ill-treatment at the hands of law enforcement officers and that the State party has failed to take measures to give effect to the rights recognized in the Covenant and to effectively investigate his complaints, in violation of article 7, read alone and in conjunction with article 2 (2) and (3) (a), of the Covenant.

3.2 The author claims a violation of his rights under article 9 (3) and (4) of the Covenant as his pretrial detention was ordered by the district prosecutor who was not qualified to exercise judicial power in this regard. Despite the Committee's recommendation to the State party, in its concluding observations dated 24 July 2000,¹ to ensure that all arrested persons are promptly brought before a judge, the relevant amendments to the law were not signed by the president until 25 June 2007.

3.3 The author alleges a violation of his rights under article 10 (1) of the Covenant because he was held in pretrial detention without access to quality medical assistance despite an obvious deterioration in his health and doctors' recommendations to have him hospitalized. He submits that, in his case, the State party failed to observe minimum standards of detention on provision of medical care and treatment for sick prisoners, in accordance with rule 22 of the Standard Minimum Rules for the Treatment of Prisoners.

¹ CCPR/CO/69/KGZ, para. 9.

3.4 The author submits that his rights under article 14 (2) of the Covenant have been violated by the television programme that aired his forced confession on national television and by the letter from the Aksiy district *akim* to the Aksiy district prosecutor. The author claims that the letter from the *akim* stating that he should receive appropriate punishment, and that the *akim* would personally monitor the author's case, resulted in the lack of an appropriate investigation by the district prosecutor's office into the claims that he had been tortured.

3.5 Finally, the author claims a violation of his rights under article 14 (3) (g) of the Covenant given that he was forced under torture to confess his guilt.

3.6 The author asks the Committee: (a) to request the State party to conduct an effective and transparent investigation into the author's allegations of torture and, if confirmed, prosecute those responsible; (b) to request the State party to provide the author with adequate compensation; (c) to recommend that the State party establish an independent body to investigate allegations of torture; (d) to recommend that the State party amend its legislation to ensure that investigations of human rights violations are conducted in accordance with the principles and safeguards provided by the Covenant; and (e) to require the State party to take all steps necessary to prevent similar violations from occurring in the future.

State party's observations on the merits

4.1 In a note verbale dated 6 February 2015, the State party submitted its observations on the merits of the communication. The State party submits that the author was arrested on 22 April 2007 on suspicion of cattle theft. On 31 July 2007, he was found guilty and fined 10,000 soms. The author did not appeal the verdict.

4.2 The State party notes that, during the prosecutor's inquiry into the allegations of torture, the author refused to undergo a forensic medical examination and denied being tortured. The inquiry resulted in the assistant district prosecutor's refusal to open a criminal investigation. This refusal was later upheld by the Aksiy district court, the Jalalabad regional court and the Supreme Court.

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

5.1 On 7 May 2015, the author submitted his comments to the State party's observations. He reiterates that he refused to undergo a medical examination because he feared being subjected to retaliatory beatings by the police officers, especially since he was easily accessible to them while being detained at the Aksiy district police department. Moreover, in order to deter the author from complaining, the police officers threatened and beat him immediately before he was questioned by the deputy district prosecutor on 27 April 2007. The author notes that, in any event, he subsequently underwent a medical examination that revealed his injuries.

5.2 The author argues that there are no domestic legal remedies available in Kyrgyzstan that would be able to establish a violation of the presumption of innocence, which is why he did not appeal his verdict, and considers all domestic remedies exhausted.

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 has violated its obligations under article 2 (2) of the Covenant, read in conjunction with article 7. The Committee reiterates that the provisions of article 2 cannot be invoked in a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except

when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim.² The Committee notes in that regard that the author claims a violation of article 2 (2) in conjunction with article 7 because the State party failed to take measures to prevent torture and to effectively investigate his complaints and provide an effective remedy. Based on the information on file, however, the Committee considers that the author has failed to sufficiently substantiate this claim for the purposes of admissibility, in a manner that would render them distinct from the claims that he has advanced under article 7, and declares it inadmissible under article 2 of the Optional Protocol.

6.4 The Committee notes the author's claim that he has exhausted all available legal domestic remedies. The Committee also notes that, while not claiming inadmissibility of the author's claims due to non-exhaustion of domestic remedies, the State party submits that the author has not appealed the judgment of the Aksiy district court dated 31 July 2007 thereby making his claim of a violation of article 14 (2) inadmissible. The Committee recalls that the purpose of article 5 (2) (b) of the Optional Protocol is, inter alia, to direct possible victims of violations of the provisions of the Covenant to seek, in the first instance, satisfaction from the competent authorities of the State party and, at the same time, to enable States parties to examine, on the basis of individual complaints, the implementation, within their territory and by their organs, of the provisions of the Covenant and, if necessary, remedy the violations occurring, before the Committee is seized of the matter.³ The Committee takes note of the author's submission that there are no domestic legal remedies available in Kyrgyzstan through which one could establish a violation of his presumption of innocence under article 14 (2) of the Covenant (see paras. 3.4 and 5.2 above), but observes that this claim was not raised either during the trial or at any time thereafter and that, as a result, domestic institutions did not have the possibility of reviewing compliance with the Covenant as regards this claim. The Committee recalls that mere doubts about the effectiveness of domestic remedies do not absolve an author from the requirement to exhaust them and that the fulfilment of reasonable procedural rules is the responsibility of the author.⁴ Accordingly, the Committee concludes that the author's claim in relation to a violation of article 14 (2) of the Covenant is inadmissible under article 5 (2) (b) of the Optional Protocol.

6.5 Although not directly invoked by the author, the communication also appears to raise issues under article 9 (1) of the Covenant regarding the author's claim about the arbitrariness of his detention and its review.

6.6 With regard to the remaining claims under article 7, read alone and in conjunction with article 2 (3) (a), and articles 9 (3) and (4), 10 (1) and 14 (3) (g) of the Covenant, the Committee considers that, despite not appealing his criminal sentence, the author has attempted to seek satisfaction from the competent authorities of the State party and remedy the violations through his complaints to the prosecutor's office and courts, up to the Supreme Court. Accordingly, the Committee concludes that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining these claims, considers them sufficiently substantiated, for the purposes of admissibility, 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 made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim that, on 22 April 2007 at 11 a.m., he was arrested by police officers of the Aksiy district police department on suspicion of cattle theft. While at the Aksiy district police station, he was subjected to beatings by four police officers for refusing to confess to several cattle thefts that had taken place in the area earlier. According to the author, he was handcuffed, punched in the head, kicked in the stomach and kidneys, a plastic bag was placed over his head, which made him suffocate and lose

² *Zhukovsky v. Belarus* (CCPR/C/127/D/2724/2016), para. 6.4; *Zhukovsky v. Belarus* (CCPR/C/127/D/2955/2017), para. 6.4; and *Zhukovsky v. Belarus* (CCPR/C/127/D/3067/2017), para. 6.6.

³ Human Rights Committee, *T.K. v. France*, communication No. 220/1987, para. 8.3.

⁴ *Tonenkaya v. Ukraine* (CCPR/C/112/D/2123/2011), para. 7.4.

consciousness, he was beaten on his feet with batons and forced to chew a chilli and a metal object was inserted into his anus, which made him lose consciousness again. Unable to bear the pain, the author confessed to six counts of cattle theft. The Committee observes that the author has submitted a detailed account of the treatment to which he claims he was subjected, with supporting medical evidence. According to the medical examination performed at the Aksiy district hospital on 1 June 2007, five weeks after his arrest, the author was still diagnosed with soft tissue bruises on his forearms, head and body, and injuries to his kidneys that could have been caused by a blunt object. On 14 June 2007, he was transferred to the Aksiy district hospital for treatment. The Committee also notes the State party's argument that, during the inquiry by the district prosecutor's office into the allegations of torture on 27 April 2007, the author refused to undergo a forensic medical examination and denied having been tortured. In this respect, the author argues that he refused to undergo a medical examination because he feared being subjected to further beatings by the police officers in retaliation, especially since he was easily accessible to them while being detained at the Aksiy district police department. In fact, he claims to have been subjected to beatings by police officers immediately before he was questioned by the deputy district prosecutor on 27 April 2007 (see paras. 2.6 and 5.1).

7.3 The Committee recalls that a State party is responsible for the security of any person it holds in detention and, when an individual in detention shows signs of injury, it is incumbent on the State party to produce evidence showing that it is not responsible.⁵ The Committee has held on several occasions that the burden of proof in such cases cannot rest with the author of a communication alone, especially considering that frequently only the State party has access to the relevant information.⁶ In the absence of any specific arguments by the State party to counter the claims made by the author, the Committee decides that due weight must be given to the author's allegations.

7.4 With regard to the State party's obligation to properly investigate the author's claims of torture, the Committee recalls its jurisprudence according to which criminal investigation and consequential prosecution are necessary remedies for violations of human rights, such as those protected by article 7 of the Covenant.⁷ The Committee also recalls that, once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially so as to make the remedy effective.⁸

7.5 The Committee notes that, in the present case, the initial complaint about the torture suffered by the author was submitted to the Aksiy district prosecutor on 26 April 2007. The Committee observes that, even though the inquiry into the allegations of torture by the district prosecutor's office was promptly initiated, it was closed on 4 May 2007 after the author denied having been tortured and refused to undergo a medical examination of his injuries, for fear of reprisals. The Committee further notes that, on 31 May and 1, 6 and 7 June 2007, the author's lawyer submitted several motions to the Aksiy district prosecutor detailing the author's claims of torture and asking for an urgent medical examination and hospitalization of the author due to the injuries that he had sustained as a result of the torture. The Committee observes that, along with the complaint, the author's lawyer submitted the results of the medical examination revealing the author's injuries, an affidavit signed by the author's cellmate who had witnessed his suffering and copies of the notes that the author had been able to send to his brother from his place of detention. However, on 15 June 2007, the Aksiy assistant district prosecutor again refused to open a criminal investigation into the author's claims based on the forced testimony given by the author on 27 April 2007 because he feared being subjected to reprisals and the explanations given by three of the four police officers

⁵ For example, *Siragev v. Uzbekistan* (CCPR/C/85/D/907/2000), para. 6.2; *Zheikov v. Russian Federation* (CCPR/C/86/D/889/1999), para. 7.2; and *Eshonov v. Uzbekistan* (CCPR/C/99/D/1225/2003), para. 9.8.

⁶ For example, Human Rights Committee, *Bleier Lewenhoff and Valino de Bleier v. Uruguay*, communication No. 30/1978, para. 13.3; and *Mukong v. Cameroon* (CCPR/C/51/D/458/1991), para. 9.2.

⁷ Human Rights Committee, general comment No. 20 (1992), para. 14, and general comment No. 31 (2004), para. 18.

⁸ Human Rights Committee, general comment No. 20 (1992), para. 14; and, for example, *Khalmamatov v. Kyrgyzstan* (CCPR/C/128/D/2384/2014), para. 6.4.

who had been accused by the author of torturing him. Nothing in the case file shows that the courts' further review of the refusal by the assistant district prosecutor to open a criminal investigation for lack of a crime went beyond the first inquiry conducted by the district prosecutor's office. In the absence of any other pertinent information, and in the circumstances of the present case, the Committee concludes that the facts before it disclose a violation of the author's rights under article 7, read alone and in conjunction with articles 2 (3) (a) and 14 (3) (g), of the Covenant.

7.6 In the light of the previous findings, the Committee will not examine the author's claims under article 10 (1) of the Covenant.

7.7 The author has further claimed a violation of article 9 (3) of the Covenant, as his pretrial detention had been approved by a prosecutor and not by a judge. The Committee recalls that, in accordance with the provisions of its general comment No. 35 (2014), a detainee must be brought promptly before a judge or other officer authorized by law to exercise judicial power and that it is inherent in the proper exercise of judicial power that it be exercised by an authority that is independent, objective and impartial. In this connection, the Committee reiterates that a public prosecutor cannot be considered as an officer exercising judicial power under article 9 (3) of the Covenant.⁹ Accordingly, the Committee considers that the facts as submitted reveal a violation of the author's rights under article 9 (3) of the Covenant.

7.8 The Committee also notes the author's undisputed allegation that, on 12 June 2007, the Aksiy district court released him from pretrial detention. However, shortly after, under pressure from victims of the alleged crimes, the judge orally revoked his own decision and ordered the author to be placed in pretrial detention again. The Committee recalls in that regard that article 9 (4) requires that the reviewing court must have the power to order release from unlawful detention and that, when a judicial order of release under article 9 (4) becomes operative, it must be complied with immediately; continued detention would be arbitrary in violation of article 9 (1).¹⁰ On the basis of the submitted documents, the Committee finds that the Aksiy district court's decision to release the author from pretrial detention was never officially revoked; instead, he remained in custody until 14 June 2007 when he was transferred to a hospital. In the absence of an explanation by the State party in this regard, the Committee concludes that the facts as submitted reveal a violation of the author's rights under article 9 (1) of the Covenant. In the light of this conclusion, the Committee will not examine separately the author's claim under article 9 (4) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of the author's rights under article 7, read alone and in conjunction with articles 2 (3) (a) and 14 (3) (g), and article 9 (1) and (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 conduct a prompt and impartial investigation into the author's allegations of torture and, if confirmed, have those responsible prosecuted and to provide the author with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

⁹ Human Rights Committee, general comment No. 35 (2014), para. 32; and, for example, *Khadzhiyev v. Turkmenistan* (CCPR/C/122/D/2252/2013), para. 7.8.

¹⁰ Human Rights Committee, general comment No. 35 (2014), para. 41.

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.
