



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. 2432/2014*.**

<i>Communication submitted by:</i>	Oleg Boyarkin and T. P. (represented by counsel from “Golos Svobody”)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	24 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 and lack of investigation
<i>Procedural issue:</i>	None
<i>Substantive issues:</i>	Torture, forced confession
<i>Articles of the Covenant:</i>	2(3), 7
<i>Article of the Optional Protocol:</i>	None

[*Note:* Explanatory notes in square brackets will be removed from the final text.]

1. The authors of the communication are Oleg Boyarkin, born in 1976, and T. P., born in 1979, both Kyrgyzstan nationals. They claim that the State party violated their rights under article 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 authors are represented by counsel.

* 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, Christof Heyns, Duncan Laki Muhumuza, David Moore, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

The facts as presented by the authors

2.1 The authors claim that on 10 June 2009, Mr. Boyarkin was arrested in his house by police officers of the Pervomaisk district, in the city of Bishkek. During the arrest, the police officers never presented their identification documents, nor did they provide reasons for the arrest. They did not let Oleg Boyarkin change into street clothes from his pyjamas, and pushed him out of the house. Mr. Boyarkin was then interrogated for two days, without formal charges, and without participation of a lawyer. He was subsequently informed that he was being held as a suspect on charges of hooliganism and inflicting serious bodily injury leading to death.¹

2.2 The authors submit that during both days in detention, the police officers tortured Oleg Boyarkin by severely beating him and suffocating him with plastic bag over his head. At times, Oleg Boyarkin was taken to the courtyard of the police station where he was doused with cold water. The author was told that the torture would stop once he were to confess his guilt in relation to the alleged crimes. Mr. Boyarkin refused, and on 11 June 2009, the police officers brought his wife, T. P., and started beating and torturing her as well. She was hit in the face and on the palms of her hands, and also verbally degraded, all in front of her husband. The authors submit that they could not stand the beating and torture and that Oleg Boyarkin was forced to incriminate himself in crimes he did not commit. He wrote a confession, the text of which had been given to him by the police officers.

2.3 The authors submit that on 12 June 2009, the Pervomaisk District Court decided to detain Mr. Boyarkin pending trial. On the same day, T. P., who had in the meantime been released, submitted a torture complaint to the prosecutor of the Pervomaisk District, which was rejected. On 13 June 2009, when Mr. Boyarkin was brought to the pre-trial detention centre SIZO-1 in Bishkek, a medical examination revealed bloody bruises on different parts of his body, which were documented². The authors tried to complain, again, to the prosecutor's office and the courts about torture in the hands of the police officers, regarding both authors. Their complaints, dated 12 June 2009, 22 June 2009, 16 July 2009 and 2 February 2010, were all rejected by the prosecutor's office of the Pervomaisk District. The authors then complained to the Pervomaisk District Court, which rejected their complaint on 7 May 2010. The Bishkek City Court rejected their appeal on 15 June 2010, and on 1 September 2010, their claims were rejected by the Supreme Court of Kyrgyzstan. In all their complaints, the authors specifically indicated the names of the police officers, T.D., A.M., and T.T., who performed the beatings. The authors therefore contend that they have exhausted all available domestic remedies.

2.4 The authors submit that on 21 December 2009, Oleg Boyarkin was found guilty of inflicting serious bodily injury resulting in death, and sentenced to nine years of imprisonment. On 27 April 2010, the Supreme Court of Kyrgyzstan rejected his appeal, and on 21 December 2009, the same court rejected his supervisory review appeal.

The complaint

3. The authors claim that the State party has violated their rights under article 7 read alone and in conjunction with article 2(3), of the Covenant, as they were subjected to torture and physical ill-treatment by State party authorities, which then failed to investigate their claims and remedy the alleged violations.

State party's observations

4.1 On 1 December 2016, the State party provided its comments on admissibility and merits by submitting information from the Office of the Prosecutor General and the Supreme Court of Kyrgyzstan. It recalls that on 26 April 2009, Mr. Boyarkin, who was previously convicted for murder, arrived at the residence of Mr. Knyazev in the city of Bishkek. Feeling "jealousy" towards his wife, the author caused various bodily injuries to Mr. Knyazev, who died as a result in a hospital.

² The authors provide a copy of this medical certificate.

4.2 The State party submits that on 11 June 2009, the author was detained on suspicion of committing this crime, and was charged with hooliganism and inflicting bodily injury leading to death. On 28 September 2009, the author was acquitted by the Pervomaisk District Court due to the lack of evidence against him. On 21 December 2009, this verdict was however overturned by the Bishkek City Court, and the author was found guilty and sentenced to nine years of imprisonment. This verdict and sentence was later fully upheld by the Supreme Court.

4.3 Mr. Boyarkin's guilt has been proven by medical and forensic evidence and testimonies of witnesses, including his spouse, T. P., as well as K.K., and other "undisputable" evidence.³ As for the complaints that the authors were tortured, these claims were examined by the prosecutor's office which on 28 June 2009 refused to initiate a criminal investigation, due to the fact that the information related to the torture claims "was not confirmed".⁴ The authors filed several additional complaints claiming torture, and all of them were rejected.⁵ It has to be noted that the injuries were sustained by the author when he was being apprehended. His claim that he was tortured can be considered as an "attempt to avoid responsibility" for his actions.

Author's comments on the State party's observations

5.1 On 17 August 2018, the authors reiterated their previous submission, and confirmed that they both were tortured to pressure Mr. Boyarkin into confessing guilt in crimes he did not commit. By providing information on Mr. Boyarkin's previous conviction, the State party tries to justify use of torture against the authors. Mr. Boyarkin's guilt was proven only with his forced confession, which he has retracted on numerous occasions, and no other evidence. Meanwhile, two witnesses, C.H.G. and G.O.V., testified in court that they saw the author being taken from his home, and that they did not see any bruises on him. Due to lack of evidence, the Pervomaisk District Court acquitted the author. The Bishkek City Court and the Supreme Court reasoned in their decisions that the author had a motive to commit this crime (alleged jealousy), but did not refer to any other evidence.

5.2 The State party failed to explain to the Committee why the author was showing bruises when he was admitted to the pre-trial detention centre, nor did it provide information regarding any effective investigation of the torture allegations. There is no information in the criminal case against Mr. Boyarkin that he resisted his arrest or that he tried to flee.

5.3 The investigation into the torture allegations was limited to posing questions to the police officers. The State party failed to question the victims. No medical, psychologic or psychiatric evaluations were conducted. The State party altogether ignores the complaints of Ms. T. P., though she also filed complaints to the prosecutor's office.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 97 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

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 authors have 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.

³ No further information is provided.

⁴ No further details of this investigation are provided.

⁵ The State party provides no additional information here.

6.4 The Committee further notes the authors' claims under article 7, read alone, and in conjunction with article 2(3) of the Covenant as they relate to Ms. T. P.. In the absence of any further pertinent information on file, the Committee considers that the authors have failed to sufficiently substantiate these claims for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers the authors have sufficiently substantiated, for the purposes of admissibility, their claims of violations of rights under article 7, read alone and in conjunction with article 2(3) of the Covenant as they relate to Mr. Oleg Boyarkin. The Committee declares these claims admissible and proceeds with their consideration of the merits.

Consideration of the merits

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

7.2 The Committee first notes the author's claims that Oleg Boyarkin was tortured for two days, starting from 10 June 2009, and subsequently, T. P. was tortured on 11 June 2009, in order to extract a confession from Oleg Boyarkin for crimes he claims he did not commit. The Committee notes that as a result, Mr. Boyarkin confessed and signed a statement admitting guilt. The Committee further notes that, subsequently, this confession was retained and used as evidence against him in court, despite his numerous retractions and complaints of torture, including in court during the trial, and during the cassation appeal. The Committee considers that, in the circumstances of the present case, and in particular in the light of the State party's failure to provide detailed explanations regarding the treatment the author was subjected to at the early stages of detention and during the interrogation, due weight should be given to the author's allegations⁶.

7.3 Regarding the State party's obligation to properly investigate the author's torture claims, the Committee recalls its jurisprudence according to which criminal investigation and consequential prosecution are necessary remedies for violation of human rights, such as those protected by article 7 of the Covenant.⁷ The Committee notes that the material on file does not allow it to conclude that the investigation into the allegations of torture was carried out promptly or effectively, despite detailed reports from the authors, witness statements, and a medical certificate indicating injuries. The Committee notes that the State party does not refute the claim that the authors were not questioned with respect to their torture allegations, and that no additional examinations were conducted. Instead of providing detailed information regarding the investigations into torture claims made by the author, the State party merely submits that Mr. Boyarkin is trying to avoid responsibility⁸. The Committee also notes that the court used Mr. Boyarkin's confession in finding him guilty, despite his contention, made during the trial hearings, that he was tortured and his confessions were forced. Accordingly, in these circumstances as described, the Committee concludes that the facts before it disclose a violation of Mr. Boyarkin's rights under article 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 of the rights of Mr. Boyarkin under article 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 to, *inter alia*, a) conduct a thorough, prompt and impartial investigation into the

⁶ The Committee notes the absence of any information regarding the State party's position on the allegations that were brought forward by T. P..

⁷ See the Committee's general comment No. 20 (1992) on the prohibition of torture and cruel treatment or punishment, para. 14; and its general comment No. 31 (2004) on the nature of the general legal obligations imposed on States parties to the Covenant, para. 18.

⁸ The Committee notes that the State party also provided information about Mr. Boyarkin's previous conviction, which is not related to the claims made in the present communication.

author's torture allegations; b) provide the author adequate compensation for the violations occurred. 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 or not 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 Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.
