



## International Covenant on Civil and Political Rights

Distr.: General  
3 December 2021  
Original: English

### Advance unedited version

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#### Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2814/2016\*\*\*

<i>Communication submitted by:</i>	Farkhad Kakharzhanov (represented by the Human Rights Advocacy Center)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	2 May 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 30 September 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	19 July 2021
<i>Subject matter:</i>	Inhuman or degrading treatment or punishment; effective investigation
<i>Procedural issues:</i>	N/A
<i>Substantive issues:</i>	Cruel, inhuman or degrading treatment or punishment
<i>Article of the Covenant:</i>	7
<i>Articles of the Optional Protocol:</i>	

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\* Adopted by the Committee at its 132<sup>nd</sup> session (28 June – 23 July 2021).

\*\* The following members of the Committee participated in the examination of the present communication: Tania Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Shuichi Furuya, Kobayyah Tchamdja Kpatcha, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Hélène Tigroudja and Gentian Zyberi.

1. The author of the communication is Farkhad Kakharzhanov, a national of Kyrgyzstan of Uzbek ethnicity, born on 13 November 1987. He claims to be a victim of violation by Kyrgyzstan of his rights under article 7 of the Covenant. The Optional Protocol entered into force for Kyrgyzstan on 7 January 1995. The author is represented by an NGO “Human Rights Advocacy Centre”.

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

2.1 On 19 June 2011, the author, traveling with his parents in a car from Jalal-Abad, was stopped by two traffic police officers at a checkpoint. Although there were no irregularities, a police officer bearing personal identification number “OB 097” demanded a bribe. The author offered to pay 20 Soms<sup>1</sup>, but the officer refused to take it. Instead, he forcefully moved the author away from the car and hit him several times in the chest, while shouting racial slurs.

2.2 On 20 June 2011, the author saw his family doctor with complaints about pain in the chest. The diagnosis by the doctor mentioned bruises on the chest. On 21 June 2011, the author filed a formal complaint about ill-treatment and bribe solicitation to the police office of Uzgen city. A forensic examination (report No. 517), carried out by a forensic expert on 21 June 2011, concluded that the author had no signs of injuries. The expert also examined the diagnosis of the family doctor and noted that it was not supported by any evidence and made only on the basis of the author’s oral complains.

2.3 On 2 July 2011 the Uzgen district prosecutor’s office decided not to open criminal proceedings in the case due to the lack of evidence, at the same time, it ordered to apply disciplinary sanctions to the identified police officer bearing personal number “OB 097” for non-observance of internal police conduct regulations. The author appealed against this decision.

2.4 On 12 July 2011, the Osh regional prosecutor’s office informed the author that the refusal to open criminal proceedings of 2 July 2011 has been quashed, the case was remitted for an additional investigation. Upon the author’s request, an additional medical examination was carried out by a panel of forensic experts on 14 July 2011. The author, *inter alia*, argued that the forensic report No. 517 did not take into account personal photos showing bruises on the author’s chest. The examination (report No. 16) did not find any signs of injuries at the author’s body. The report indicated that the photos presented by the author had no name, date or time stamp on them. They showed only the upper chest of an individual with nine dark round spots on it. Experts were unable to conclude whether these were bruises. Face of the individual on these photos was cropped. On 22 July 2011, the Uzgen district prosecutor’s office refused to open criminal proceedings in the case.

2.5 The author appealed to the Uzgen District Court against the refusal of the Uzgen district prosecutor’s office to open criminal investigation. The court dismissed the appeal on 2 November 2012 as unsubstantiated. The author appealed to the Osh Regional Court, which dismissed the appeal on 8 April 2013. On 27 October 2015 the Supreme Court endorsed the lower courts’ decisions and dismissed the author’s appeal.

2.6 On 7 July 2011, the author was diagnosed with cardioneurosis by his family doctor. The author has been also receiving psychotherapy sessions in a treatment centre from 6 to 16 August 2011 since the symptoms of his vegetative-vascular dystonia increased, according to the author’s claims, after the stress caused by the 2010 conflict in Jalal-Abad<sup>2</sup> and by the police beating.

### **Complaint**

3. The author alleges that Kyrgyzstan violated article 7 of the Covenant during the investigation and judicial proceedings in his case. He argues that he was ill-treated and

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<sup>1</sup> Approximately 0.20 EUR.

<sup>2</sup> The author refers to the 2010 clashes between ethnic Kyrgyz and Uzbeks in southern Kyrgyzstan, primarily in the cities of Osh and Jalal-Abad.

humiliated by a law enforcement officer and national authorities failed to investigate this incident.

#### **State party's observations on merits**

4.1 In a note verbale dated 6 April 2017, the State party submitted its observations on the merits of the present communication.

4.2 The State party contends that preliminary inquiry did not reveal any physical injuries on the author's body, as established by national courts proceedings and decisions. As a result, on 22 July 2011, the Uzgen district prosecutor's office refused to open criminal proceedings in the case. This decision was subject to judicial review. National courts found the refusal both well substantiated and rendered in full compliance with national procedural requirements.

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

5.1 On 25 May 2017, the author submitted his comments on the State party's observations on the merits of the communication.

5.2 The author argues that his complaint about police brutality was not treated with the diligence required by article 7 of the Covenant. The Uzgen district prosecutor's office examined his case superficially. Investigators and national courts did not question the author's relatives and doctors. They also failed to commission additional medical and psychological expert reports. The author also argues that domestic courts did not examine photos showing bruises on his body. The author further claims that the decision to impose disciplinary sanctions for misconduct on the police officer confirms that ill-treatment has taken place.

#### **Further submissions from the State party**

6.1 In a note verbale dated 10 January 2018 the State party submitted additional information on the present communication.

6.2 The State party notes that the author's car was stopped by traffic police officers on 19 June 2011, as its side windows were tinted and the car looked overloaded. The author's mother insulted the police officers and a verbal argument broke out. Subsequently, the author and his mother filed a complaint about the incident. Due to lack of evidence supporting the author's ill-treatment allegations the Uzgen district prosecutor's office refused to open criminal proceedings. At the same time, one of the traffic police officers was held disciplinary liable for stopping the author's car without a proper justification and failing to follow the regular traffic pull over procedure. The State party reiterates that national authorities used all procedural means to investigate the incident: all relevant witnesses were questioned; medical reports were obtained. The State party further submits that the documents relevant to the refusal to initiate criminal proceedings were destroyed due to expiry of statutory prescribed storage period.

6.3 The State party also recalls that the author is allowed to initiate civil proceedings at national level seeking compensation of pecuniary and non-pecuniary damages under domestic law.

#### **Author's comments on the State party's further submissions**

7. On 19 February 2018, the author submitted his additional comments on the State party's submissions. The author further reiterates his claims and argues that his physical injuries were supported by sufficient medical evidence. Moreover, the author argues that compensation for ill-treatment is conditional on previous finding of guilt of the perpetrator in criminal proceedings. Accordingly, in the circumstances of his case, the author has no practical way to obtain compensation at national level.

## Issues and proceedings before the Committee

### *Considerations of admissibility*

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

8.2 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.

8.3 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any explicit objection by the State party in that connection, the Committee considers that it is not precluded from examining the communication under article 5 (2) (b) of the Optional Protocol.

8.4 The State party did not challenge admissibility of the communication on any grounds. The Committee finds that the author has provided sufficient information in support of his claim under article 7 of the Covenant. Therefore, the Committee declares the communication admissible and proceeds with its consideration of the merits.

### *Consideration of the merits*

9.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, as provided under article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that his right under article 7 of the Covenant have been violated as he was physically and verbally attacked by the traffic police officer and no effective investigation into the incident followed. In support of his claim, the author refers to his family doctor diagnosis of 20 June 2011, which mentions bruises on the author's chest. However, the Committee notes that the medical expert examination conducted on 21 June 2011, which produced medical report No. 517, did not reveal any bruises or marks on the author's body. Furthermore, this same medical report No. 517 questioned the veracity of the author's family doctor's diagnosis, as the latter was not specific, was made on the basis of the author's oral complaints and did not contain a detailed description of the allegedly sustained injuries. The Committee also notes that additional medical examination carried out by a panel of forensic experts on 14 July 2011 endorsed the findings of report No. 517. The Committee takes note of the fact that the author did not either provide explanations of the discrepancy between the two medical examinations carried out on 20 (by the author's family doctor) and 21 June (by a forensic expert) or present any additional evidence (e.g. receipts for medicine prescribe to treat the injuries). He also did not explicitly argue that the experts' conclusions were falsified.

9.3 The Committee further notes that the author claims to have photos of his bruises taken right after the incident. These photos were provided to national authorities and the Committee. However, they depict only a torso of an unidentifiable individual, with no date, time stamp or name imprinted on them. Consequently, it is not possible to conclude unequivocally that these are indeed photos of the author taken after the alleged police brutality incident. Moreover, as also noted by domestic medical experts, it is not possible to establish that dark spots found on the depicted individual's body were in fact bruises.

9.4 The Committee also notes the author's claim that he was diagnosed with cardioneurosis and was forced to undergo a psychological treatment in 2011 due to stress caused by the 2010 conflict in Jalal-Abad and by the police beating. While the author's diagnosis may be confirmed by medical evidence, it is not possible to establish whether the stress has been caused by the alleged police incident.

9.5 The Committee also observes the author's argument that by holding the police officer disciplinary liable, domestic authorities confirmed that the ill-treatment had taken place. However, as follows from the information provided by the State party, the police officer was sanctioned for failure to observe internal bylaws and, primarily, for stopping the author's car without a valid justification. Nothing in the documents related to the disciplinary proceedings confirms the author's version of events.

9.6 With respect to the State party's obligation to properly investigate the author's claims of ill-treatment, the Committee observes that the national authorities promptly responded to the author's criminal complaint. A forensic examination was carried out two days after the alleged incident. An additional medical examination by a panel of forensic experts was commissioned at the author's request. The investigation into the police officers' conduct was carried out by structurally independent officials from Uzgen district prosecutor's office. It has not been argued by the author, nor could be concluded on the basis of presented documents, that the investigators had any personal bias on any ground.

9.7 The Committee notes the author's argument, that national authorities failed to question all witnesses and to commission additional expert reports. National authorities took statements from the author and his mother, the police officers and several civilians. The author did not clearly specify who the authorities should have questioned and what information capable to affect the outcome of the proceedings these potential witnesses could have provided. The Committee does not consider, in absence of clear and unequivocal medical evidence of the ill-treatment, that by failing to question the author's treating doctors, domestic authorities have rendered the criminal proceedings ineffective. The author did not indicate that his doctors' testimonies would differ from their written diagnosis, which were examined in the course of criminal proceedings in detail. With respect to the expert examinations, the Committee observes that the author did not claim, either at national level or in his submissions before the Committee, that the two medical expert reports (forensic report No. 517, of 21 June 2011 and report No. 16, of 14 July 2011) were falsified.

9.8 In light of the abovementioned consideration, the Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not disclose a violation of article 7 of the Covenant.