



**International Covenant on
Civil and Political Rights**

Distr.: Restricted*
29 April 2011

Original: English

Human Rights Committee
One hundredth and first session
14 March - 1 April 2011

Views

Communication No. 1503/2006

<u>Submitted by:</u>	Otabek Akhadov (represented by counsel)
<u>Alleged victims:</u>	Otabek Akhadov
<u>State party:</u>	Kyrgyzstan
<u>Date of communication:</u>	18 October 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 31 October 2006 (not issued in document form)
<u>Date of adoption of Views:</u>	25 March 2011

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Right to life/ torture/ cruel, inhuman and degrading treatment/ arbitrary detention/ fair trial/ effective remedy/ if provision is made for a lighter penalty, the offender shall benefit hereby
<i>Substantive issues:</i>	Degree of substantiation of claims
<i>Procedural issues:</i>	None
<i>Articles of the Covenant:</i>	article 6, article7, article 9, article 10(1), article 14 (1), article 14 (3) (b) in conjunction with article 2 (3), article 14 (3) (g), and article 15 (1)
<i>Articles of the Optional Protocol:</i>	2

On 25 March 2011, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1503/2006.

[Annex]

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (one hundredth and first session)

Concerning

Communication No. 1503/2006**

Submitted by: Otabek Akhadov (represented by counsel)
Alleged victim: Otabek Akhadov
State party: Kyrgyzstan
Date of communication: 18 October 2006 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 March 2011,

Having concluded its consideration of communication No. 1503/2006, submitted to the Human Rights Committee on behalf of Mr. Otabek Akhadov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Mr. Otabek Akhadov, a national of Uzbekistan, born in 1979. He claims to be a victim of violations by Kyrgyzstan of his rights under article 6, article 7, article 9, article 10, paragraph 1, article 14, paragraph 1, article 2, paragraph 3 together with article 14, paragraph 3 (b), article 14, paragraph 3 (g), and article 15, paragraph 1 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 7 January 1995. The author is represented by counsel.

** The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanela Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

The text of an individual opinion signed by Committee member Mr. Rafael Rivas Posada is appended to the present Views.

The facts as presented by the author

2.1 On 28 March 2000, Mr. Nigmat Bazakov, president of the Uigur society "Ittipak", was shot and killed in the street near his home on Musa Dzhallil Street in Bishkek. On 29 March 2000, the investigative bodies initiated a criminal case relating to his murder. On 25 May 2000, an act of terrorism occurred in Bishkek, which resulted in the death of the Chinese citizen Mr. Abdukadir Gulam and injuries to several members of a Chinese delegation as well as to some Kyrgyz citizens. The author was arrested on 6 July 2000, on suspicion of having committed the above crimes.

2.2 The arrest of the author was not formally recorded until 7 July 2000. In the period between his apprehension and 21 July 2000, the author was kept in the Investigation Detention Center (SIZO) of the Department of Internal Affairs of the city of Bishkek. During that period the author was subjected to torture and cruel treatment by the criminal investigation officers. He was tortured at different times of the day, sometimes between 9 and 12 in the morning, other times in the afternoons or between 17 and 23 hours in the evenings. The author's hand were tied and police officers beat him with fists and kicked him in the sensitive parts of his body (such as his head, his back, and in the areas of his kidneys, lungs and liver); they also beat him on the soles of his feet and on the head with weights, pressed his chest against the table, hit the back of his head with objects filled with water, and burned his arms with cigarettes. He bled often and still has scars from the beatings. The author was also forced to take psychotropic substances. The author also provides the names of two high-ranked officials, who, according to him were aware of the fact that he has been tortured.

2.3 On 7 July 2000, after the papers regarding the author's arrest were formalized, the investigators assigned him a lawyer whom he did not choose. The latter did not take any steps to protect him. On 9 July 2000, unable to support the beatings and threatened with further ill-treatment, the author signed a confession admitting the commission of the crimes he was accused of by the investigators. On 10 July 2000, acquaintances of the author commissioned another lawyer, Ms Golisheva, to represent the author. On the same date the lawyer filed a complaint regarding the ill-treatment of the author and requested a medical examination of the author in order to establish that he had been tortured. The Senior Investigator based on that lawyer's request, issued an order for a medical examination to be conducted, but the examination did not take place until 10 August 2000. The medical expert provided an expertise, concluding that the traces on the author's body were consistent with the type of injuries he described and the timing of those injuries. The lawyer did not make any further complaints and did not submit any motions, because, according to the author, she was afraid of reprisals.

2.4 The author submits that he was not informed of his right to appeal against his detention and that he did not have the opportunity to do so, since he was never brought before of a court.

2.5 On 22 January 2001, the Senior Investigator of the Head Investigative Department of the Ministry of Internal Affairs formally charged the author with several criminal offences, including the murders of Mr. Bazakov and Mr. Gulam. On 1 March 2001, the charges were approved by the Deputy General Prosecutor. In February 2001, without specifying a date, the investigators issued an act declaring that the investigation was completed and transmitting the case to court. In April 2001, the case file was returned to the Prosecutor's office with instructions to fill gaps in the investigation. The case was eventually resent to the Sverdlovsk District court, which, on 31 December 2001, convicted the author of having committed several crimes, imposing the following punishment: for crimes under article 97, part 2, paragraphs 1, 4, 5, 8, 9, 16 and 17 of the Criminal Code, convicted and sentenced the author to death for the murders of Mr. Bazakov and Mr. Gulam; for crimes under article 294 of the Criminal Code, convicted and sentenced the

author to death for attempted murder of a state or public official; for crimes under article 350 of the Criminal Code, convicted and sentenced the author to two years of imprisonment for the forgery and use of forged documents; convicted and sentenced the author to 10 years of imprisonment for participating in a joint criminal enterprise; convicted and sentenced the author to 15 years of imprisonment for kidnapping a Chinese citizen; convicted and sentenced the author to 20 years of imprisonment for terrorism; and convicted and sentenced the author to 7 years of imprisonment for illegal possession of weapons. As joint punishment for all the crimes the Court imposed the death penalty on the author.

2.6 Throughout the court proceedings the author denied his guilt. In his written testimony, submitted to the Bishkek City court on 22 July 2002, he complained that the confession he made during the investigation was extracted under torture and proclaimed his innocence. On an unspecified date in July 2002, the author also complained to the President of the Republic that he had been subjected to torture. Neither complaint was investigated.

2.7 The author appealed the verdict before the Bishkek City court, which on 30 July 2002 rejected the appeal. A subsequent appeal in the order of supervision to the Supreme Court was also rejected on 22 June 2006. According to the domestic legislation, the Supreme Court decisions taken in the order of supervision are final and are not subject to any further appeals.

2.8 In 2007 all death sentences were commuted to life imprisonment, following the abolition of the death penalty in the domestic legislation of Kyrgyzstan. The author's sentence was commuted by the Supreme Court on 26 December 2007. On 11 February 2010, the parliament of Kyrgyzstan ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights which aims to abolish the death penalty. Effective 6 December 2010, Kyrgyzstan acceded to the Second Optional Protocol.

2.9 The author contends that he has exhausted all available domestic remedies.

The complaint

3.1 The author claims to be a victim of violations by Kyrgyzstan of his rights under article 6, article 7, article 9, article 10, paragraph 1, article 14, paragraph 1, article 2, paragraph 3, together with article 14, paragraph 3 (b), article 14, paragraph 3 (g), and article 15, paragraph 1, of the Covenant.

3.2 The author submits that his rights under article 2, paragraph 3, together with article 14, paragraph 3 (b) were violated by the State party since he was not informed of his rights to refuse to testify and not to testify against himself. He was not represented by a lawyer from the moment of his arrest; he was not informed of his right to have legal assistance assigned to him despite the fact that he requested to be provided with such assistance from the moment of his detention.

3.3 The author submits that his rights under article 14, paragraph 3 (g), article 7 and article 10, paragraph 1 were violated by the State party, since the investigative officers subjected him to torture in order to force him to sign a confession.

3.4 The author submits that his rights under article 14, paragraph 1, were violated, since he was denied a fair trial in the determination of the criminal charges against him. There were significant contradictions in the testimonies of some witnesses and the court did not take into consideration the evidence (medical expertise) presented that the confession of the author was extracted by torture.

3.5 The author submits that his rights under article 6, paragraph 1, were violated since he was sentenced to death following an unfair trial, during which significant violations of the domestic criminal and criminal- procedure legislation occurred, as well as using a confession extracted by torture.

3.6 The author submits that his rights under article 9 were violated since he was not informed of his right to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention, not was he given the opportunity to contest his detention in court.

3.7 The author submits that his rights under article 15, paragraph 1, were violated, since at the time when the Supreme Court decided his case (22 June 2006), the death penalty was no longer the penalty prescribed by the Criminal Code for an attempted murder of state or public official and the Supreme Court failed to replace the death penalty with imprisonment.

State party's observations on admissibility and merits

4.1 On 22 March 2007, the State party submits that the complaint of the author had been "scrupulously and thoroughly" checked by the Office of the Prosecutor-General in respect of the "legitimacy and the validity of the judicial verdicts to convict Mr. Akhadov". It submits that on 31 December 2001, the author was sentenced to death by the Sverdlovsk District Court for committing a number of grave and especially grave crimes, such as terrorism, attempted murder and the murder of a public official. His guilt had been indisputably proven by the materials in the criminal case and by "its deliberations in judicial sittings".

4.2 The State party submits that author's allegations on the unlawful methods used by the law enforcement authorities, resulting in a forced confession and that he has been "deprived the right to appeal against the decision of the court and, that his right to protection has not been provided, mismatch the validity". The State party maintains that the complaint submitted by the author's lawyer had been considered on appeal by the Bishkek City Court, which confirmed the verdict of the first instance court without amendments. The State party also submits that according to the current legislation a revision of the guilty verdict upon a request of the convicted person, "not deteriorating the position of the convicted, is not limited by the time frame." Therefore the author has the right to appeal against his verdict in the order of supervision to the Supreme Court six years from the issuance of the judgment.

Authors' comments and further submissions

5.1 On 10 August 2007, the author challenges the State party's submission that his complaint had been "scrupulously and thoroughly" checked by the Office of the Prosecutor-General in respect of the "legitimacy and the validity of the judicial verdicts". The author submits that articles 3 and 8 of the Law "On the Prosecutor's Office of the Kyrgyz Republic" do not give the Prosecutor's Office the competencies to conduct reviews of the lawfulness and correctness of court decisions on sentencing. Such competency is given exclusively to the higher court instances.

5.2 The author also disputes that his guilt was proven beyond doubt by the evidence in the case and that his torture allegations were false. The author maintains that the evidence against him was inconsistent with the accusations. He also points out that the observations of the State party fail to refute any of his arguments regarding the unlawfulness of the verdict against him.

5.3 The author submits that on 17 and 23 March 2001, he had filed complaints to the Prosecutor's Office that he had been submitted to physical and psychological violence by the criminal investigators and that the above complaints were never considered on their merits, in violation of the domestic Criminal Procedure Code. The author reiterates that his

complaints were supplemented by medical expert's conclusions of 10 August 2000, which evidenced that he had been subjected to violence.¹ The author points out that there is no decision by any investigative body or any court addressing the torture allegations. According to article 156 of the Criminal Procedure Code, the complaint of the lawyer regarding the application of physical violence against her client should have been investigated, but that did not happen. If an investigation had taken place, one of the following two documents would have been issued: a refusal to open a criminal investigation or a decision to open a criminal investigation. No such documents exist. The fact that the prosecution and the court ignored the complaints of the author would suggest that they were in agreement with the torture.

5.4 The author further disputes the State party's argument that he has not been deprived of the right to appeal the court decision and that his right to a defence was respected, since the fact that his attorney submitted an appeal does not mean that his right to a defence was ensured at all stages of the investigation and during pre-trial proceedings. The author reiterates that he was not allowed to have a lawyer from the moment of his arrest, which constitutes a grave violation of his rights under article 40 of the Kyrgyz Criminal Procedure Code. He was not informed of the right to have an attorney free of charge, despite the fact that he requested that an attorney should be appointed to assist him. The author submits that the absence of an attorney immediately after the arrest is of particular importance for the detainee, because it is during that period that cruel treatment is applied by the police in order to obtain confessions.

5.5 The author submits that he fails to understand the basis of the State party's assertion that he has the right to request the review of his case by the Supreme Court six years after the verdict. The Supreme Court already reviewed the decisions of the lower courts and rejected the author's appeal on 22 June 2006. According to article 11 of the Law amending the Criminal and Criminal Procedure Codes,² which entered into force on 3 July 2007, the Supreme Court was mandated to conduct a review of all criminal cases, where the death penalty had been replaced by life imprisonment within six months. However, the above article does not oblige the Supreme Court to review cases, such as the author's case, on their merits, concerning violations of the right to be represented by a lawyer, to submit explanations etc. The author submits that the above observation of the State party contradicts numerous provision of the domestic legislation.

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 article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes, as required by article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement. In the absence of any objection by the State party,

¹ See *supra* para 2.3.

² The author refers to the Law "On introducing amendments and additions to the Criminal Code of the Kyrgyz Republic, the Criminal Procedure Code of the Kyrgyz Republic, the Criminal Execution Code of the Kyrgyz Republic, in the of the Kyrgyz Republic's Laws "Regarding the Supreme Court of the Kyrgyz Republic and the domestic courts"", adopted on 26 April 2007, entered into force on 3 July 2007.

the Committee considers that the requirements of article 5, paragraph 2(b), of the Optional Protocol have been met.

6.3 The Committee notes the State party's submission that the author has the opportunity to file a request for a review of his verdict in the order of supervision before the Supreme Court. The Committee recalls its previous jurisprudence,³ according to which supervisory review procedures against court decisions which have entered into force constitute an extraordinary appeal which is dependent on the discretionary power of a judge or prosecutor. When such review takes place, it is limited to issues of law only and does not permit any review of facts and evidence. Consequently, the Committee finds that article 5, paragraph 2 (b), of the Optional Protocol does not preclude it from considering the communication.

6.4 The Committee notes the author's claim that his rights under article 2, paragraph 3 together with article 14, paragraph 3(b) were violated by the State party. The author, however, has provided no details regarding the lack of adequate time and facilities for the preparation of his defence, nor in what way was he prevented from communicating with a counsel of his own choosing. In the circumstances, the Committee considers that this part of the communication is unsubstantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

6.5 In the Committee's view, the author has sufficiently substantiated, for purposes of admissibility the claims under articles 6, 7, 9, 10, paragraph 1, 14, paragraph 1, 14, paragraph 3 (g), and 15, paragraph 1, of the Covenant and therefore proceeds to their examination on the merits.

Consideration of the merits

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

7.2 The author claims that he was beaten and tortured by the police immediately after his arrest during two weeks' detention in the hands of the investigating authorities, and he was thus forced to confess guilt. The author provides detailed information regarding his ill-treatment, and claims the complaints made to this effect were ignored by the prosecution and the courts. The State party does not refute these allegations specifically, but rather limits itself to contending that the guilt of the author was fully established.

7.3 The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially⁴. Although the decision of the Bishkek City court of 30 July 2002 mentions Mr. Akhadov's torture allegations, the latter rejects these with a blanket statement that the evidence in the case confirms the guilt of the accused. The Committee considers that in the circumstances of the present case, the State party has failed to demonstrate that its authorities did address the torture allegations advanced by the author expeditiously and adequately, in the context of both domestic criminal proceedings and the present communication. Accordingly, due

³ See the Committee's General comment No. 32 (article 14), document CCPR/C/GC/32, paragraph 50: "A system of supervisory review that only applies to sentences whose execution has commenced does not meet the requirements of article 14, paragraph 5, regardless of whether such review can be requested by the convicted person or is dependent on the discretionary power of a judge or prosecutor."; and, for example, Communication No. 836/1998, *Gelazauskas v Lithuania*, Views adopted 17 March 2003, para 7.2.

⁴ General Comment on article 7, No. 20 [44], adopted on 3 April 1992, para 14.

weight must be given to the author's allegations. The Committee therefore concludes that the facts before it disclose a violation of the rights of Mr. Akhadov under articles 7 and 14, paragraph 3 (g), of the Covenant. In the light of this conclusion, it is not necessary to examine separately the author's claim under article 10 of the Covenant.

7.4 The Committee notes the author's allegations that he was arrested and held for two weeks in the Department of Internal Affairs before being brought before a court and given the opportunity to challenge the lawfulness of his detention. In the absence of a reply from the State party on this particular issue, the Committee finds that they should be given due weight, and that the facts described disclose a violation of the author's right to liberty and security of person and specifically the right not to be arbitrarily detained and imprisoned. Consequently, the Committee finds that article 9 of the Covenant has been violated in the present case.

7.5 The Committee considers that in the present case, the courts, and this was uncontested by the State party, failed to address properly the victim's complaints related to his ill-treatment by the police. The Committee considers that as a consequence, the criminal procedures in Mr. Akhadov's case were vitiated by irregularities, which casts doubts on the fairness of the criminal trial as a whole. In the absence of any pertinent observations from the State party in this respect, and without having to examine separately each of the author's allegations in this connection, the Committee considers that in the circumstances of the case, the facts as presented reveal a separate violation of the author's rights under article 14, paragraph 1, of the Covenant. In light of this conclusion, and given that the author has been sentenced to death following a trial held in violation of the fair trial guarantees, the Committee concludes that the author is also a victim of a violation of his rights under article 6, read in conjunction with article 14, of the Covenant.

7.6 The Committee notes the author's claim under article 15, paragraph 1, of the Covenant that, at the time when the Supreme Court decided his case (22 June 2006), the death penalty was no longer the penalty set by the Criminal Code for an attempted murder of a state or public official and that the Supreme Court failed to replace the death penalty. In the light of the State party's abolition of the death penalty and consequent commutation of his death sentence, as well as of the Committee's finding in paragraph 7.5, the Committee considers it unnecessary to make a finding on this aspect of the author's complaint.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated article 6, read in conjunction with article 14; article 7 and article 14, paragraph 3 (g); article 9; and article 14, paragraph 1, of the International Covenant on Civil and Political Rights.

9. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee considers that the State party is under an obligation to provide the author with an effective remedy including: conducting full and thorough investigation into the allegations of torture and ill-treatment and initiating criminal proceedings against those responsible for the treatment to which the author was subjected; considering his retrial in conformity with all guarantees enshrined in the Covenant or his release; and providing the author with appropriate reparation, including compensation. The State party is also under an obligation to take steps to prevent similar violations 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. In addition, it requests the State party to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Appendix

Individual opinion of Committee member Mr. Rafael Rivas Posada (partially dissenting)

In paragraph 8 of its decision on Communication No. 1503/2006, the Human Rights Committee concludes that the State party has [directly] violated article 6 of the Covenant on Civil and Political Rights, in view of the fact that the State has violated the guarantees of due process enshrined in article 14 of the Covenant. The communication in question concerns a sentence of death handed down in violation of article 14, but which was not carried out because the victim's death sentence was commuted following the State party's abolition of the death penalty in 2007. In my opinion there is no direct violation of article 6, since the victim was not deprived of life, and I disagree with the extended interpretation of that article, whereby, like the Committee concluded, the direct violation of article 14 implies the direct violation of article 6. In my opinion, the wording of the Committee's decision in paragraph 8, stating that it is "*of the view that the State party has violated article 6, read in conjunction with article 14*", should be replaced by the reverse formulation, whereby the Committee is "*of the view that the State party has violated article 14, read in conjunction with article 6*".

I agree with the Committee's conclusions regarding the violations of the other articles of the Covenant, with the exception of the wording referred to above.

[*signed*] Mr. Rafael Rivas Posada

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
