



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. 2193/2012* **

<i>Communication submitted by:</i>	K.B. (represented by Irina Biryukova)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	22 August 2012 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 24 August 2012 (not issued in document form)
<i>Date of adoption of Views:</i>	10 March 2016
<i>Subject matter:</i>	Extradition to Kyrgyzstan; excessive use of force upon apprehension
<i>Substantive issues:</i>	Risk of torture and ill-treatment; excessive use of force
<i>Procedural issues:</i>	Insufficient substantiation; non-exhaustion of domestic remedies
<i>Article of the Covenant:</i>	7
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

* Adopted by the Committee at its 116th session (7-31 March 2016).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Muhumuza Laki, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

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1.1 The author of the communication is K.B., a Kyrgyz national of Chechen ethnicity born in 1977. He claims that, by extraditing him to Kyrgyzstan, the Russian Federation would violate his rights under article 7 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is represented.

1.2 On 24 August 2012, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to extradite the author to Kyrgyzstan pending consideration of his communication. It appears from the information provided by the author's counsel on 17 March 2015, as well as from the State party's observations dated 11 June 2015, that the author has been extradited to Kyrgyzstan.

The facts as presented by the author

2.1 The author lived in Kyrgyzstan. In January 2008, he was arrested and detained for eight months on suspicion of having committed a crime under article 168, paragraph 2, of the Criminal Code of Kyrgyzstan (robbery as part of a group of persons). In March 2010, he was arrested again. He was tortured in order to make him confess to committing a crime. On an unspecified date, he was released and sought refuge with relatives in Chechnya, where he underwent treatment in an outpatient medical institution. He subsequently moved to Moscow. He was known in the community of Kyrgyz immigrants and soon many Kyrgyz citizens of Uzbek ethnicity who had fled after the events that had taken place in Osh started approaching him with complaints that the employees of the Embassy of Kyrgyzstan were demanding bribes to issue the documents necessary to allow them to stay in the Russian Federation. The author attempted to "take all possible action" against these acts and maintains that in response the Kyrgyz authorities fabricated criminal charges against him.

2.2 On 19 August 2011, the author was arrested during a joint operation by Russian and Kyrgyz law enforcement authorities, in response to an international arrest warrant. The author submits that at the time of the arrest he was in a sanatorium in the Russian Federation together with two other persons and that he witnessed the Kyrgyz police officers throwing one of them out of the window. The person in question died as a result. During the arrest, the author was injured by the arresting officers : his nose was broken and he received multiple kicks in the face and in the chest.

2.3 On 13 September 2011, the Office of the Prosecutor General of the Russian Federation received from the Kyrgyz authorities an extradition request dated 25 August 2011 concerning the author. A decision of the Court of Alamudinsky District concerning the author's measure of restraint was annexed to the request; it stated that the author was accused of having committed a crime under article 167 of the Criminal Code of Kyrgyzstan in June 2008 (robbery as part of a group of persons). On 14 November 2011, the Deputy-Prosecutor General satisfied the extradition request. The author appealed the Prosecutor's decision to the Moscow Regional Court on 7 December 2011, stating that in June 2008 he had been in detention in Bishkek and could not have committed the crimes of which he was accused. His appeal was rejected on 3 April 2012. On 9 April 2012, the author filed a cassation appeal against that decision before the Supreme Court, which quashed the decision of the Moscow Regional Court on 30 May 2012 and returned the case for new examination. On 11 July 2012, the Moscow Regional Court issued a decision, again rejecting the author's appeal. On 17 July 2012, the author again appealed the negative decision before the Supreme Court, but his appeal was rejected on 22 August 2012.

2.4 On 21 December 2011, the author filed an application for refugee status in the Russian Federation. He claimed that he was being persecuted on ethnic and political grounds as, soon after his arrival in the country in 2010, many Kyrgyz citizens of Uzbek ethnicity who had fled after the Osh events started approaching him with complaints that

the employees of the Embassy of Kyrgyzstan were demanding bribes to allow them to remain in the country and that he attempted to “take all possible action” against these acts. The author also claimed that he would be subjected to torture upon return. On 26 March 2012, the Moscow Department of the Federal Migration Service rejected his application, finding that his claims lacked credibility and substantiation. It also noted that the author had arrived in the State party on 24 March 2010 but had applied for asylum only in December 2011. On 28 April 2012, the author appealed the decision before the Federal Migration Service.

2.5 On 30 March 2012, the author’s counsel filed a report on his behalf to the Investigative Committee of the Russian Federation concerning the action of the Russian and Kyrgyz law enforcement officials during the author’s apprehension on 19 August 2011. According to the counsel’s report, the author did not want to bring any complaints earlier in that regard as he had feared for his relatives’ well-being in Kyrgyzstan; however, at the time of disclosing this information, they had all left Kyrgyzstan. On 11 May 2012, the Investigative Committee informed the author that an investigation into the allegations was ongoing.

2.6 On 25 May 2012, the author submitted an application to the European Court of Human Rights, with a request for interim measures. On 29 May 2012, the Court informed him that the request had been rejected and that, in the light of the material before it and insofar as the matters complained of were within the Court’s competence, it had found that they did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

2.7 The author was released from the detention on 19 August 2012, when the maximum permissible period for detention was reached.

The complaint

3.1 The author maintains that, should he be returned to Kyrgyzstan, in violation of his rights under article 7 of the Covenant, he would be arrested and subjected to torture in order to make him confess to committing crimes. He submits that he has been previously tortured and been hospitalized as a result. In support of his claim, he submits that in August 2011 his brother was arrested by the Kyrgyz authorities, that he was accused of being the author’s accomplice and that he was tortured in order to make him confess to committing crimes and reveal the author’s whereabouts. The author’s brother was released after their mother had paid a bribe to the police, and sought refuge with relatives in Chechnya. In this regard, the brother complained to the president of Chechnya on 17 April 2012. The author also refers to sources describing the systematic use of torture by the police in Kyrgyzstan.

3.2 The author further submits that he was ill-treated during his apprehension on 19 August 2011 by Kyrgyz and Russian law enforcement officials.

State party’s observations on admissibility and the merits

4.1 On 9 April 2014, the State party noted that, pursuant to the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases, on 25 August 2011 the Office of the Prosecutor General of Kyrgyzstan requested the author’s extradition in order to prosecute him for crimes committed under article 167 of the Criminal Code of Kyrgyzstan. The author had been previously convicted for different crimes, including theft and extortion, and was accused of having openly stolen, together with others, 1,000 United States dollars from one A.A. in June 2008. The author’s actions are also punishable under article 161, paragraph 2 (a), of the Criminal Code of the Russian Federation with imprisonment for more than one year. Statutory limitations were not applicable under Kyrgyz or Russian criminal legislation. The State party further notes that a copy of the

counsel's report concerning the actions of the Kyrgyz law enforcement officials in relation to the author and his brother was sent to the Office of the Prosecutor General of Kyrgyzstan, for investigation.

4.2 The State party submits that the author was apprehended on its territory on 19 August 2011. During his apprehension, the author was informed of his rights. On the same date, the Prosecutors' Office of the Moscow Region in Solnechnogorsk decided to detain the author as a measure of restraint. On 26 September 2012, the author's detention was prolonged. On both occasions, he was told that he had a right to appeal those decisions; however, neither the author nor his counsel appealed. Furthermore, from the moment of his apprehension on 19 August 2011, the author was provided legal assistance. In this regard, the State party notes that no complaint was made by either the author or his lawyers about the actions of the law enforcement officials during apprehension or during the extradition proceedings. The State party notes that, upon receiving information from the counsel about the alleged unlawful actions during the author's apprehension, the Investigation Department of the Investigative Committee of the Moscow Region in Solnechnogorsk examined the allegations at issue and, on 25 June 2012, decided to refuse to initiate criminal proceedings. In order to verify the lawfulness of that refusal, the materials of the examination were sent to the Head Office of the Investigative Committee for review. On 10 September 2012, the Investigative Committee quashed the decision of 25 June 2012. The State party observes that the author's counsel submitted the claims about the unlawful actions during the author's apprehension eight months after the apprehension and five months after the adoption of the decision with respect to the author's extradition. The State party submits that this fact demonstrates that the author's counsel attempted to unjustifiably delay the adoption of a decision on the issue of the author's extradition. Consequently, the State party maintains that the author was provided with an effective remedy, making it possible for him to appeal any decision during the extradition proceedings.

4.3 The Office of the Prosecutor General of the Russian Federation examined the extradition request and decided to satisfy it on 14 November 2011. The State party notes that the author appealed this decision before the Moscow Regional Court, which rejected the appeal on 3 April 2012. Thereafter, the author appealed to the Supreme Court, which quashed the Regional Court's decision on 30 May 2012. The Supreme Court noted that the Regional Court had not requested the Office of the Prosecutor General to submit its considerations regarding the changes in the time of the crime with which the author had been charged in Kyrgyzstan. Consequently, on 14 June 2012, the Deputy Prosecutor General authorized the extradition request, taking into account the period when the crime at issue had been committed. On 11 July 2012, the author's appeal was again rejected by the Regional Court. Thereafter, the Regional Court's decision was upheld by the Supreme Court on 22 August 2012. The State party submits that the author was released from detention on 19 August 2012, when the maximum permissible period for his detention had been reached. In this regard, the State party reiterates that neither the author nor his counsel ever appealed against the decisions to keep the author detained.

4.4 In the light of the above, the State party submits that, in order to reach a decision concerning the author's extradition, all the necessary verification and examination measures were taken. With respect to the real risk of being subjected to cruel, inhuman or degrading treatment or punishment in Kyrgyzstan, the State party considers as unfounded the author's claim that he would be subjected to treatment contrary to article 7 of the Covenant in Kyrgyzstan. In this regard, it notes that Kyrgyzstan, a State Member of the United Nations, has ratified the main international human rights treaties, including the Covenant. The State party further submits that the Office of the Prosecutor General of Kyrgyzstan provided assurances that the author's prosecution would be conducted in strict compliance with the Criminal Procedure Code and the international obligations of Kyrgyzstan, that he would not be handed over to a third State without the prior agreement of the Russian Federation, that

he would not be tried or convicted for crimes not included in the initial extradition request and that, after the end of the criminal proceedings and after having served his sentence, he would be free to leave Kyrgyzstan. The Office of the Prosecutor General of Kyrgyzstan gave assurances that the criminal prosecution against the author had no political motivation and was not related to his race or religion, that he would not be subjected to torture or other cruel or degrading treatment or punishment and that his right to defence would be ensured. The State party notes that it is not aware of any facts that would demonstrate violations of these assurances.

4.5 Furthermore, the author's claim that he would be subjected to ill-treatment in Kyrgyzstan was also examined by the Moscow Department of the Federal Migration Service during his asylum proceedings. In that regard, the State party notes that, on 26 March 2012, the Department rejected the author's appeal, finding that the author had not presented sufficient information to substantiate his fear that he would be persecuted in Kyrgyzstan on grounds of ethnicity, religion, citizenship, nationality, social group or political opinions. The author appealed this decision before the Federal Migration Service, which rejected his appeal on 6 June 2012.

4.6 The State party notes that the author is accused in Kyrgyzstan of having committed a crime of a general nature. It further submits that the author applied for asylum only approximately six months after his arrest and almost three months after the date when the decision concerning his extradition had been adopted.

4.7 Finally, the State party notes that, according to article 10 of the Federal Law on Refugees, a person who seeks asylum or who has been recognized as a refugee, or who has lost the status of refugee, or who has been deprived of the status of refugee may not be returned against his or her will to the territory of the State of his or her nationality or of his or her former usual residence. Accordingly, an application by an individual for refugee status or asylum should lead to the suspension of extradition proceedings until a final decision has been taken on the issue of refugee status or asylum. In that regard, it notes that this requirement has been respected in relation to the author, as he has not been extradited and lives in Moscow. For these reasons, the State party maintains that the author has not exhausted all available domestic remedies as required by article 5 (2) (b) of the Optional Protocol.

Author's comments on the State party's observations

5.1 On 17 March 2015, the author's counsel submitted that she disagrees with the State party's arguments. With respect to the State party's submission that no grounds have been established demonstrating that the author would be subjected to inhuman treatment in Kyrgyzstan, the counsel notes that she has previously described the circumstances of the author's apprehension in the State party. She reiterates that the author's brother had been "pressured" in Kyrgyzstan and that he had complained about this to the president of Chechnya. The counsel further notes the State party's submission that its authorities have forwarded to the Office of the Prosecutor General of Kyrgyzstan, for examination, a copy of her letter concerning the author's and his brother's ill-treatment by Kyrgyz law enforcement officials; no information has been provided, however, about the outcome of that examination. As to the State party's statement that the decision to refuse to initiate criminal proceedings concerning the author's ill-treatment had been quashed on 10 September 2012 by the Investigative Committee of the Moscow Region, the counsel notes that the State party has submitted neither to the Investigative Committee nor to the counsel any further information in that regard. Therefore, the State party has failed to take any action to investigate the circumstances concerning the author's arrest or, at least, has failed to inform the author or his counsel about the results of the investigation.

5.2 The counsel further notes the State party's argument that the author complained about ill-treatment only eight months after his arrest and five months following the adoption of the decision authorizing his extradition, thus unjustifiably prolonging the adoption of the decision on extradition. In that regard, the counsel submits that she only started representing the author before the Moscow Regional Court at the appeals stage and that, as soon as she found out about the author's ill-treatment during his apprehension and the necessary evidence was obtained, she submitted the relevant information to the authorities. In addition, it is for the State party's authorities to investigate ill-treatment claims. Upon detention, the author was examined by the detention facility's medical personnel, who established that he had bodily injuries and noted them in his medical records. The State party's authorities did not, however, investigate the cause of those injuries. The author eventually complained about his ill-treatment but the authorities decided not to initiate criminal proceedings. The counsel notes that this decision was later quashed and that no final decision has been taken in that regard.

5.3 The counsel further refers to the State party's argumentation on the assurances provided by the Office of the Prosecutor General of Kyrgyzstan that the author would not be subjected to ill-treatment upon return and that nothing demonstrates that Kyrgyzstan would breach the provided assurances. She notes that during his extradition and asylum proceedings the author provided sufficient evidence to substantiate his fears of being subjected to torture or ill-treatment upon return. The counsel notes that the examination of the author's asylum claim was formalistic and that during his extradition proceedings the claimed risk of ill-treatment was not assessed. She refers to the judgment in the case *Yakubov v. Russia*, wherein the European Court of Human Rights stated that requiring an applicant to submit "indisputable evidence" of the risk of ill-treatment, places on him or her a disproportionate burden of proving the existence of a future event and therefore, in practice, deprives him or her of an opportunity to obtain a meaningful examination of his or her claim.¹ She notes that the sole argument made by State party to justify its conclusion that the author's rights would not be breached upon return is the fact that Kyrgyzstan is also a party to the Covenant and that, therefore, it is independently responsible for observing the Covenant's requirements with respect to the Russian Federation and to the international community. According to the counsel, this demonstrates that the State party is trying to place the responsibility on Kyrgyzstan in case the author will be subjected to ill-treatment upon return.

5.4 The counsel further refers to the conclusions of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning the use of torture and lack of accountability in Kyrgyzstan.² She also refers to the judgment in the case *Saliyev v. Russia*, wherein the European Court of Human Rights stated:

even accepting for the sake of argument that the assurances in question were not couched in general terms, the Court observes that Kyrgyzstan is not a Contracting State to the Convention, nor have its authorities demonstrated the existence of an effective system of legal protection against torture that could act as an equivalent to the system required of the Contracting States. Moreover, it has not been demonstrated before the Court that Kyrgyzstan's commitment to guaranteeing access to the applicant by Russian diplomatic staff would lead to effective protection against proscribed ill-treatment in practical terms, as it has not been shown that the aforementioned staff would be in possession of the expertise required for effective follow-up of the Kyrgyz authorities' compliance with their undertakings. Nor was

¹ *Yakubov v. Russia* (application No. 7265/10), European Court of Human Rights, judgment of 8 November 2011, para. 99.

² A/HRC/19/61/Add.2.

there any guarantee that they would be able to speak to the applicant without witnesses. In addition, their potential involvement was not supported by any practical mechanism setting out, for instance, a procedure by which the applicant could lodge complaints with them or for their unfettered access to detention facilities ... The Government's claim that unnamed individuals have been visited in Kyrgyzstan after their extradition has not been supported by any evidence and thus cannot be considered as an illustration of the existence of a monitoring mechanism in the requesting country³

5.5 Finally, as to the State party's observation that the author is residing in Moscow, counsel submits that, according to the latest information available to her, the author has been extradited to Kyrgyzstan and she is not in the possession of any information concerning his fate.

State party's additional observations on admissibility and the merits

6.1 On 11 June 2015, the State party noted that it forwarded to the Office of the Prosecutor General of Kyrgyzstan the information concerning the allegedly unlawful actions of the Kyrgyz law enforcement officials with respect to the author and his brother in Kyrgyzstan. The Office of the Prosecutor General of Kyrgyzstan examined the information and established that the author's brother had already complained to it about the ill-treatment in August 2011 in Bishkek and that his complaint had been forwarded, for examination, to the Office of the Prosecutor in Bishkek on 14 June 2012. On 24 June 2012, however, that Office refused to initiate criminal proceedings owing to a lack of *corpus delicti*. Therefore, the author's allegations are manifestly unfounded. In that connection, the State party notes that examination of the lawfulness of the said decision does not fall within its competence.

6.2 The State party further reiterates that, upon arrival at the Department of the Ministry of Internal Affairs of Solnechnogorsk District on 19 August 2011, the author did not complain about any ill-treatment during his arrest. His counsel lodged a complaint about the alleged ill-treatment only on 11 October 2012, in other words more than one year after the alleged events. Following the counsel's complaint, the Investigation Department of the Investigative Committee of the Moscow Region in Solnechnogorsk examined the allegations. The officers who had apprehended the author (from the Head Office of the Investigative Committee of the Moscow Region), staff of the Department of the Ministry of Internal Affairs of Solnechnogorsk District and Krykov police officers were questioned; all maintained that the author was not subjected to ill-treatment. As a result, on 29 April 2015, the Office of the Prosecutor in Solnechnogorsk adopted a decision not to initiate criminal proceedings owing to lack of *corpus delicti* in relation to the officers' actions. The State party notes that that decision was revoked in April 2015 and that the Head Office of the Investigative Committee of the Moscow Region has ordered an additional comprehensive inquiry, which has included the sending of a request to the Kyrgyz authorities to provide legal assistance. The additional examination is supervised by the Office of the Prosecutor General of the Russian Federation. The State party notes that the head office of the Investigative Committee of the Moscow Region has ordered the Head of the Investigation Department in Solnechnogorsk to take measures concerning the fact that no decision based on law had been adopted for a long period of time.

6.3 The State party reiterates that, from the moment of his apprehension on 19 August 2011, the author was ensured legal assistance. In addition, he was offered the opportunity, throughout his extradition proceedings, to present his arguments as to why he should not be

³ *Saliyev v. Russia* (application No. 39093/13), European Court of Human Rights, judgment of 17 April 2014, para. 66.

extradited to Kyrgyzstan. He was also guaranteed the right to complain about any breach of his rights; no such complaints were received, however. According to the author, he arrived in the State party in March 2010, where he wanted to live permanently, and did not know the reasons for which he was wanted by the Kyrgyz authorities. In addition, he denied any persecution on political or other grounds. The Office of the Prosecutor General carefully assessed the author's claims concerning the possible risk of being subjected to ill-treatment upon extradition to Kyrgyzstan. During his apprehension (no exact date specified), the author was asked, in the presence of his counsel, whether he was being persecuted for political or any other reason and why he had left Kyrgyzstan. The State party reiterates that the author did not apply for asylum upon arrival to the State party; he applied only after the extradition proceedings had begun. It also notes that the author's claim that he risks being subjected to torture and other ill-treatment upon extradition was also examined by the Moscow Department of the Federal Migration Service and later, on appeal, by the Federal Migration Service. The State party submits that the author appealed the decision of the Federal Migration Court, but that the decision was upheld by the Court of Basman District on 2 November 2012. That Court's judgment was upheld by the Moscow Regional Court.

6.4 The State party notes that, when examining decisions concerning a person's extradition, the State party's courts also consider claims concerning the possibility that a person may be subjected to torture by the authorities of the country requesting extradition. It notes that there have been cases when extradition decisions have been quashed, with reference, in particular, to article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).⁴ The State party also submits that, when taking a decision concerning the author's extradition, the Office of the Prosecutor General did not establish grounds for believing that his rights would be breached upon extradition.

6.5 With regard to the counsel's reference to the jurisprudence of the European Court of Human Rights, the State party notes the case of *Latipov v. Russia*,⁵ on a deportation to Tajikistan. In that case, the Court did not find a violation of the applicant's rights under article 3 of the European Convention of Human Rights and concluded that the general human rights situation in a country may not be the sole ground for forbidding the extradition of an individual. The Court also noted the need to obtain guarantees from the State requesting the extradition that would facilitate establishing diplomatic mechanisms, including those permitting access by observers and making it possible to control, in an objective manner, the observance of the extradited individual's rights.

6.6 The State party submits that the Office of the Prosecutor General, together with the Ministry of Foreign Affairs, have established a mechanism that makes it possible to verify the observance of extradited persons' rights, inter alia, by allowing diplomatic officials to visit places of deprivation of liberty. Within the framework of that mechanism, the State party notes that its Office of the Prosecutor General has received from its Kyrgyz counterpart further assurances that the State party's diplomatic officials will be able to visit the author in his place of detention and verify the respect of his rights. Within this verification mechanism, the State party currently receives, on a regular basis, information from the Office of the Prosecutor General of Kyrgyzstan concerning the fate of individuals of Uzbek and other nationalities who have been extradited for criminal prosecution. That information does not demonstrate that the Kyrgyz authorities are violating the rights of those extradited, including those belonging to minorities, to not be subjected to any kind of

⁴ The State party refers to a decision dated 23 March 2011 of the Novosibirsk Regional Court and to a decision dated 18 May 2011 of the Supreme Court concerning one Zh.M.A.

⁵ *Latipov v. Russia* (application No. 77658/11), European Court of Human Rights, judgment of 12 December 2013.

inhuman treatment or punishment upon return. Moreover, the information received indicates that the Kyrgyz authorities do not treat the above-mentioned categories of persons in a biased manner.

Additional comments by the parties

7.1 On 3 February 2016, the author's counsel reported that the author had been extradited to Kyrgyzstan through Kazakhstan, most likely on 2 September 2013. While the author had also sought asylum in Kazakhstan, his application was rejected on 13 November 2013. Thereafter, the counsel had lost contact with the author and his wife.

7.2 On 10 February 2016, the State party noted that the Deputy-Prosecutor General's decision to satisfy the request concerning the author's extradition had been upheld by the Moscow Regional Court on 11 July 2012 and by the Supreme Court on 22 August 2012, in the context of cassation proceedings. Accordingly, the author was handed over to Kyrgyz law enforcement authorities on 27 September 2013. The State party further reports that on 5 November 2014 the Court of Alamudinsky District, in Kyrgyzstan, terminated the criminal proceedings that had been against the author because the alleged victim decided to drop the charges. The State party is not in the possession of any other information concerning the author or his whereabouts.

Issues and proceedings before the Committee

Non-respect of the Committee's request for interim measures

8.1 The Committee notes that the State party extradited the author although his communication had been registered under the Optional Protocol and although an application for interim measures of protection had been addressed to the State party with a request not to extradite the author pending the examination of his case by the Committee. The Committee recalls⁶ that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and art. 1 of the Optional Protocol). Implicit in a State's adherence to the Optional Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications and, after examination thereof, to forward its views to the State party and to the individual (art. 5 (1) and (4)).⁷

8.2 Apart from any violation of the Covenant found against a State party in a communication, a State party commits serious breaches of its obligations under the Optional Protocol if its action or inaction serves to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In the present communication, the author alleges that his rights under article 7 of the Covenant would be violated should he be extradited to Kyrgyzstan. On 24 August 2012, the Committee requested the State party not to extradite the author to Kyrgyzstan pending consideration of his communication. Despite that, the State party proceeded with the

⁶ See communication No. 869/1999, *Piandiong at al. v. the Philippines*, Views adopted on 19 October 2000.

⁷ See communications No. 1910/2009, *Zhuk v. Belarus*, Views adopted on 30 October 2013, para. 6.2; Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006, *Maksudov et al v. Kyrgyzstan*, Views adopted on 16 July 2008, at para. 10.1; No. 2192/2012, *N.S. v. Russian Federation*, Views adopted on 27 March 2015, para. 8.1.

extradition of the author. The State party breached its obligations under the Optional Protocol by extraditing the author before the Committee could conclude its consideration and examination and the formulation and communication of its Views.

8.3 The Committee recalls⁸ that interim measures pursuant to rule 92 of its rules of procedure, adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Optional Protocol. Flouting of the rule, especially by irreversible measures such as, in the present case, the author's extradition, undermines the protection of Covenant rights through the Optional Protocol. In the Committee's view, these circumstances disclose a breach by the State party of its obligations under article 1 of the Optional Protocol.

Consideration of admissibility

9.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

9.2 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. The Committee observes that the author presented an application on the same events before the European Court of Human Rights; however, by a letter dated 29 May 2012, the Court informed the author, inter alia, that the material before it did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. The Committee recalls that, in ratifying the Optional Protocol, the State party did not introduce a reservation excluding the competence of the Committee in relation to cases that have been examined under another procedure of international investigation or settlement.⁹ Accordingly, the Committee concludes that it is not precluded by article 5 (2) (a) of the Optional Protocol from examining the communication.

9.3 The Committee takes note of the author's submission that excessive force has been used against him and that he was subjected to ill-treatment during his apprehension on 19 August 2011 by Russian and Kyrgyz law enforcement officials. The Committee also notes that the author has attached a copy of an excerpt from his medical record stating that upon detention he was examined by the detention facility's medical personnel, who established that he had bodily injuries. The Committee observes, however, that the author has not provided any further details concerning what exactly happened during his apprehension and, in particular, who inflicted the injuries he allegedly sustained and how exactly those injuries occurred. In these circumstances and in the absence of any other pertinent information on file, the Committee concludes that, in the present case, the author has failed to sufficiently substantiate his allegations for purposes of admissibility, and, accordingly, declares this part of the communication inadmissible under article 2 of the Optional Protocol.

9.4 The Committee further notes that the State party has challenged the admissibility of the author's claim under article 7 of the Covenant that he risks being subjected to ill-treatment upon extradition to Kyrgyzstan, for non-exhaustion of domestic remedies. The Committee notes, however, that the State party has not specified which domestic remedies have not been exhausted by the author to prevent his extradition. The Committee notes that,

⁸ See communications No. 964/2001, *Saidova v. Tajikistan*, Views adopted on 8 July 2004; No. 2192/2012, *N.S. v. Russian Federation*, Views adopted on 27 March 2015, para. 8.3.

⁹ See, for example, communication no. 1945/2010, *Achabal. v. Spain*, Views adopted on 27 March 2013, para. 7.2.

according to the information provided by counsel on 17 March 2015, as well as later by the State party in its further observations of 10 February 2016, the author has in fact been extradited to Kyrgyzstan. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining this part of the communication, raising issues under article 7 of the Covenant, for purposes of admissibility, and proceeds with its consideration of the merits.

Consideration of the merits

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

10.2 The Committee notes the author's claim that if the Russian Federation proceeded with his extradition, it would violate his rights under article 7 of the Covenant.

10.3 The Committee recalls paragraph 12 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal¹⁰ and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.¹¹ In making this assessment, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.¹² The Committee further recalls its jurisprudence, according to which considerable weight should be given to the assessment conducted by the State party¹³ and that it is generally for organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists, unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.¹⁴

10.4 The Committee observes that the author's claims that he would be subjected to torture if extradited to Kyrgyzstan were examined by the State party's Federal Migration Service in the course of the asylum proceedings and by the Russian courts in the course of the extradition proceedings, which found his claims that he would face a real, foreseeable and personal risk of being subjected to torture in Kyrgyzstan unfounded. The Committee further notes that most of the evidence presented by the author relates to the general human rights situation in Kyrgyzstan and not to his specific case. In this connection, the Committee observes that the author claims that he was tortured in Kyrgyzstan in March 2010 and that as a result he received medical treatment in Grozny. The author has submitted to the Committee a copy of an excerpt from his medical record concerning his treatment in Grozny, which was issued on 31 December 2011, in other words almost two

¹⁰ See, for example, communications No. 2007/2010, *X. v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010; No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6.

¹¹ See for example communications No. 2007/2010, *X. v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

¹² *Ibid.*

¹³ See, for example, communications No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3; No. 2344/2014, *E.P. and F.P. v. Denmark*, Views adopted on 2 November 2015, para. 8.4.

¹⁴ See, for example, communication No.2344/2014, *E.P. and F.P. v. Denmark*, Views adopted on 2 November 2015, para. 8.4.

years after the alleged ill-treatment in Kyrgyzstan in March 2010. The Committee notes, however, that according to this excerpt, the author was treated in an outpatient medical institution in Grozny from 20 to 31 March 2010, while, according to the decision of 26 March 2012 of the Moscow Department of the Federal Migration Service, the author arrived in Moscow on 24 March 2010. In addition, the Committee observes that, according to the copies of the author's different appeals submitted to the State party's authorities, the author did not submit the excerpt to the authorities. Furthermore, the author has not provided any details whatsoever, either to the State party's authorities or to the Committee, on the ill-treatment suffered in March 2010, in other words there is no information regarding the method of torture, the context or the alleged perpetrators (such as their name and number). The Committee notes that the author's brother's complaint of 17 April 2012 to the president of Chechnya does not contain such details either. It also notes that, in his asylum application of 21 December 2011, the author stated that he left Kyrgyzstan in March 2010 owing to the ethnic tensions there; he did not claim that he had been tortured. In addition, the Committee notes the absence of any evidence that would establish that the decisions of the State party's authorities were clearly arbitrary with respect to the author's allegations. In the light of the above, the Committee cannot conclude that the information before it shows that the author's extradition to Kyrgyzstan would have exposed him to a real risk of treatment contrary to article 7 of the Covenant.¹⁵

11. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the extradition of the author pending the consideration of his communication before the Committee was in contradiction with the Committee's request for interim measures of protection in the present case, disclosing a violation by the Russian Federation of its obligations under article 1 of the Optional Protocol.¹⁶

12. The State party is under an obligation to avoid violations of article 1 of the Optional Protocol in the future and to comply with the requests of the Committee for interim measures.¹⁷

¹⁵ See, for example, communication No. 2192/2012, *N.S. v. the Russian Federation*, Views adopted on 27 March 2015, para. 10.4.

¹⁶ *Ibid.*, para. 11.

¹⁷ *Ibid.*, para. 12.