



## 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. 2187/2012\*, \*\*

<i>Communication submitted by:</i>	Zhakhangir Bazarov (represented by counsel, Khusanbai Saliev)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	22 May 2012 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 16 August 2012 (not issued in document form)
<i>Date of adoption of Views:</i>	21 October 2016
<i>Subject matters:</i>	Torture and ill-treatment in detention; unfair trial
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Torture; fair trial; fair trial — legal assistance; arbitrary arrest — detention; discrimination on the grounds of ethnic origin
<i>Articles of the Covenant:</i>	2 (3), 7, 9 (1), (3) and (4), 14 (1) and (3) (d), (e) and (g) and 26
<i>Article of the Optional Protocol:</i>	2

1. The author of the communication is Zhakhangir Bazarov, an ethnic Uzbek and a citizen of Kyrgyzstan born in 1974. He claims to be a victim of violations, by Kyrgyzstan,

\* Adopted by the Committee at its 118th session (17 October-4 November 2016).

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



of his rights under articles 7, alone and read in conjunction with article 2, (3), 9 (1), (3) and (4), 14 (1), (3) (d), (e) and (g), article 26 of the Covenant. The Optional Protocol entered into force for Kyrgyzstan on 7 January 1995. The author is represented by counsel.

#### **The facts as submitted by the author**

2.1 The author submits that on the morning of 19 July 2010, he was detained by the police in his home and, together with his mother, delivered to the Internal Affairs Department of the Osh District. Between 10 a.m. and 5 p.m. that day he was kept in an office without being given any explanation for the reasons for his apprehension. At 5 p.m. two police officers told him that they were going to take his fingerprints, but instead they handcuffed him, placed him in a vehicle and drove him to the Karasu police department.

2.2 The author submits that on the way to the police department, the officers started beating him over the face and the head, demanding that he confessed to committing a murder. He refused to do so. When they arrived at the police department, he was taken to an office where there were five or six plainclothes officers. They again requested a confession. When the author refused they stripped him of his clothes and started beating him with a stick over the head and in the area of the kidneys. Then he was handcuffed, forced to lie down, beaten on the soles of his feet, strangled with a plastic wrap over his head and the nail on his big toe was ripped off. The torture continued for two days. He was occasionally taken to a cell and given some ointment, with the instruction to put it on his injuries to cover the bruises. After two days, the author signed a confession drafted by the police officers.

2.3 The author submits that between 19 and 24 July 2010, he was in the hands of police officers in the Karasu Police Department. On 20 and 24 July, the Osh city court issued orders for his detention on remand and, as a result, he should have been transferred to the pretrial detention facility SIZO-5, but he was kept in the police department until 11 August 2010, so that his injuries healed and became difficult to detect. He maintains that this was a regular practice in Kyrgyzstan.

2.4 On 27 August 2010, the Karasu district court convicted the author of crimes under article 233, paragraph 3 (calls to active insubordination to the lawful requests of the authorities and to mass riots, and calls for violence against persons), article 168, paragraph 1, subparagraph 3 (commission of a robbery with the use or threat of violence, committed repeatedly), article 97 (murder committed with particular violence, connected with robbery, due to inter-ethnic, race or religious hostility, premeditated hooliganism, or committed in a group) of the Criminal Code and sentenced to 23 years' imprisonment and confiscation of property.

2.5 On 12 October 2010, as a result of his appeal to the Osh regional court, the charges under article 168, paragraph 1, subparagraph 3 and article 97, paragraph 14, were excluded from the verdict, but the rest of the verdict was left unchanged. On 16 December 2010, following a review requested by the author's attorney, the Supreme Court overruled the decision of the Osh regional court and confirmed the verdict of 27 August 2010.

2.6 The author submits that he did not complain regarding the torture endured while he was still in the hands of the police, because he feared for his safety. He attempted to complain to the medical service after he was transferred to the pretrial detention facility SIZO-5, but the personnel there ignored his complaints and told him that he should have filed a complaint while in the police department. He submits that for this reason he is unable to present a medical certificate confirming his injuries.

2.7 The author maintains that he complained regarding the torture he had experienced to the courts at two instances and that he showed the wounds on his legs and feet. Further, he raised allegations of torture in the cassation appeal; his lawyer photographed the marks of

his injuries, which were visible over a month later, and filed a complaint with the Supreme Court on 13 December 2010 regarding the treatment endured by him; and judges and prosecutors at all levels heard his allegations of torture. In addition, the author and his lawyers provided the results of medical examinations and the testimonies of several witnesses, all of which failed to result in an investigation into his allegations of torture. The author submits that he has exhausted all available and effective domestic remedies.<sup>1</sup>

### **The complaint**

3.1 The author claims that the torture and ill-treatment he suffered at the hands of law enforcement officers violated his rights under article 7 of the Covenant. The failure of the State party to launch an investigation into his complaints of ill-treatment and torture violated his rights under article 7, read together with article 2 (3), of the Covenant.

3.2 The author further submits that he was kept for five days in a police department without any record of his detention, or any charges brought against him, in violation of article 9 (1) of the Covenant. He also submits that the police concealed from the court the fact that he had already been detained on 19 July when the detention issue was reviewed by the Osh city court on 24 July and that he did not attend the hearing. He also believes that the judge who decided on his detention failed to examine the legality of his arrest and did not consider any alternatives to detention, in violation of article 9 (3) and (4) of the Covenant.

3.3 The author claims that he did not receive a fair and public hearing, in violation of his rights under article 14 (1) of the Covenant. He further claims that his fellow villagers were not allowed to be present in court during his trial; that there was a general atmosphere of fear during the trial and that ethnic Uzbek witnesses felt intimidated; that he was not allowed to summon witnesses to testify in court, in violation of article 14 (3) (e) of the Covenant, and that he was forced to confess to being guilty, in violation of article 14 (3) (g). He further submits that during the investigation, the investigating officers “offered” that he hire the lawyer on duty and that the latter was working for the investigation, ignored his complaints about torture and tried to convince him to confess to being guilty, promising that she would assist with his release. He maintains that the fact that he did not have legal assistance during the pretrial investigation amounts to a violation of his rights under article 14 (3) (d) of the Covenant.

3.4 The author claims that he was unfairly targeted because of his ethnicity, in violation of article 26 of the Covenant. He submits several reports from international non-governmental organizations testifying to the discriminatory treatment of Uzbeks in the aftermath of the violence in Osh in June 2010.

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<sup>1</sup> The author submits that the violations of his rights must be considered in a particular context, namely the aftermath of the violent events in Osh in June 2010. His case was one of the first to be tried in relation to the events and the authorities were keen to justify their actions for purposes of public opinion, without safeguarding human rights and freedoms. The author refers to the Amnesty International report “Still waiting for justice: one year on from the violence in southern Kyrgyzstan” (June 2011), which states: “In the immediate aftermath of the June violence, security forces reportedly used excessive force in their search operations — ostensibly carried out to seize weapons and detain suspects. Law enforcement operations and criminal investigations in the following weeks disproportionately targeted Uzbeks and Uzbek neighbourhoods, while failing to identify and investigate alleged Kyrgyz perpetrators. Hundreds of men, mostly Uzbek, were arbitrarily detained and allegedly beaten during raids and later tortured or otherwise ill-treated in detention.”

### **State party's observations on admissibility and the merits**

4.1 On 22 February and 4 March 2013, the State party presented its observations on the admissibility and merits of the communication.

4.2 The State party submits that it is confirmed that the author took part in the mass violence that started on 11 June 2010. He also took part in calling for mass violence against law enforcement agents and for the destruction of property. He himself actively participated in those events. On 12 June 2010, the author and his accomplices intended to kill a person of Kyrgyz ethnicity near the Myrzalim café the in Karasu district. They attacked U.K, a person who was present at that time near the café and hit him with wooden sticks. U.K. died as a result.

4.3 On 23 June 2010, the deputy prosecutor of Karasu district initiated a criminal investigation against the author. The deputy prosecutor also asked the Karasu district court to order that the author be detained pending trial. The author was arrested on 24 July 2010. From the moment of his arrest, he was provided with a lawyer, I.T. This lawyer was able to participate in all the investigation activities and had unlimited access to the author.

4.4 The State party submits that neither the author nor his lawyer ever challenged the court order regarding the author's arrest.

4.5 As a result of the Karasu district court hearings, the author was sentenced to 23 years' imprisonment on 27 August 2010. The verdict and the sentence were based on several articles of the Criminal Code of Kyrgyzstan, such as those dealing with mass violence, mass riots, murder, robbery and others. The author filed an appeal to the Osh regional court, which changed the verdict of the lower court and excluded two articles of the Criminal Code. The author filed a subsequent appeal with the Supreme Court of Kyrgyzstan.

4.6 The Supreme Court, in turn, overturned the decision of the Osh regional court and reinstated the verdict and sentence of the Karasu district court dated 27 August 2010.

4.7 During the investigation and his trial, the author did not complain about torture or other forms of ill-treatment. Such complaints were not part of his initial appeal either. Those complaints were only made when another lawyer, T.T., started to represent the author during hearings in the Osh regional court, beginning on 2 September 2010. The verdict and sentence therefore became final and are not subject to any further appeal.

4.8 It has also been established that the author has never filed a complaint about torture to the prosecutor's office or to the police. Based on that, it can be concluded that the allegations of torture were made by the author "in order to avoid criminal punishment". The prosecutor's office, nevertheless, will conduct an investigation into the allegations.

4.9 The State party submits that the author is currently imprisoned in prison No. 10 in the city of Osh. There are currently no complaints from the author or his lawyer regarding the conditions of his imprisonment. Based on a medical examination, "there are no signs of bodily injuries".

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

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

5.2 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 investigation or settlement.

5.3 The Committee takes note of the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

5.4 The Committee has noted the author's claims under articles 9 (3) and (4), 14 (1) and (3) (d) and (e) and 26 of the Covenant. In the absence of any further pertinent information on file, however, the Committee considers that the author has failed to sufficiently substantiate, for purposes of admissibility, those allegations. It therefore considers that part of the communication inadmissible under article 2 of the Optional Protocol.

5.5 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, his remaining claims under article 7, read separately and in conjunction with articles 2 (3), 9 (1) and 14 (3) (g) of the Covenant, declares them admissible and proceeds with their consideration of the merits.

#### *Consideration of the merits*

6.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

6.2 The Committee first takes into consideration the author's allegations that he was, on a number of occasions, tortured and otherwise mistreated. The Committee notes that the author reported torture both to the Osh regional court and to the Supreme Court of Kyrgyzstan. It also takes note of the State party's admission that the author submitted his allegations of torture on 2 September 2010. The State party, instead of launching a prompt and impartial investigation by competent authorities,<sup>2</sup> attributed the author's complaints to his desire to avoid punishment for criminal behaviour. The Committee also notes that the author and his lawyers provided the courts with photographs of the signs of torture, medical examination results confirming signs of torture and testimonies of witnesses. The Committee considers that, in the circumstances of the present case, and in particular in the light of the State party's inability to explain the visible signs of mistreatment that were witnessed on a number of occasions, due weight should be given to the author's allegations.

6.3 Regarding the State party's obligation to properly investigate the author's claims of torture, the Committee recalls its jurisprudence according to which criminal investigation and consequential prosecution are necessary remedies for violations of human rights, such as those protected by article 7 of the Covenant.<sup>3</sup> The Committee notes that according to the material on file, no investigation was carried out into the allegations of torture, despite a number of incriminatory witness accounts. In the circumstances of the present case, the Committee concludes that the facts before it disclose a violation of the author's rights under article 7 of the Covenant, read separately and in conjunction with article 2 (3).

6.4 The Committee further notes the author's claims under article 9 (1) that he was arbitrarily detained from 19 to 24 July 2010, when his detention was reviewed by the Osh city court. The author claims that the State party arbitrarily detained him until 24 July 2010 to enable the police officers to torture him. The State party contends that the author was

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<sup>2</sup> See the Committee's general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14.

<sup>3</sup> See the Committee's general comments No. 20, para. 14, and No. 31 (2004) on the nature of the general legal obligations imposed on States parties to the Covenant, para. 18.

detained only from 24 July 2010. The author further submits that during the several days of his arbitrary detention, he was tortured by several police officers and forced to confess to being guilty. That confession, the author claims, was used as a basis for his conviction on 27 August 2010, in violation of his rights under article 14 (3) (g). Considering the Committee's conclusions regarding violations under article 7 and the State party's inability or unwillingness to investigate the allegations of torture made by the author, and the unrefuted fact that the author's forced confession was retained as evidence and used as a basis for his conviction, the Committee considers that the author's rights under articles 9 (1) and 14 (3) (g) of the Covenant were also violated.

7. 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 author's rights under article 7 of the Covenant, read separately and in conjunction with articles 2 (3), 9 (1) and 14 (3) (g) of the Covenant.

8. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps to release the author; quash the author's conviction and, if necessary, conduct a new trial, in accordance with the principles of fair hearings, presumption of innocence and other procedural safeguards; conduct a prompt and impartial investigation into the author's allegations of torture; and provide the author with adequate compensation and reimbursement of the court fines and any legal costs and other related fees incurred by him. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective 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 Views.

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