



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**  
Ninety-ninth session  
12 to 30 July 2010

**Views**

**Communications No. 1369/2005**

<u>Submitted by:</u>	Felix Kulov (represented by counsel, Lyubov Ivanova)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Kyrgyzstan
<u>Date of communication:</u>	11 November 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 24 February 2005 (not issued in document form)
<u>Date of adoption of Views:</u>	26 July 2010

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\* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Conviction of an opposition leader after an unfair trial, unlawful detention
<i>Procedural issue:</i>	Non-substantiation
<i>Substantive issues:</i>	Right to fair trial, right to immediate access to a lawyer, unlawful constraint measure, presumption of innocence, right to examine witnesses, freedom of expression.
<i>Articles of the Covenant:</i>	2; 7; 9, paragraphs 1, 3 and 4; 14, paragraphs 1, 2, 3 (a)-(e), and 5; 15; 19; and 25 (a)
<i>Article of the Optional Protocol:</i>	2

On 26 July 2010, 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. 1369/2005.

[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 (ninety-ninth session)**

concerning

#### **Communication No. 1369/2005\*\***

Submitted by: Felix Kulov (represented by counsel, Lyubov Ivanova)

Alleged victim: The author

State party: Kyrgyzstan

Date of communication: 11 November 2004 (initial submission)

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

Meeting on 26 July 2010,

Having concluded its consideration of communication No. 1369/2005, submitted to the Human Rights Committee on behalf of Mr. Felix Kulov 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 author 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. Felix Kulov, a Kyrgyz national born in 1948, who at the time of submission was serving a prison sentence in Kyrgyzstan. The author claims to be the victim of violations by Kyrgyzstan of his rights under articles 2; 7; 9, paragraphs 1, 3 and 4; 14, paragraphs 1, 2, 3 (a)- (e), and 5; 15; 19; and 25 (a), of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Kyrgyzstan on 7 January 1995. He is represented by counsel, Lyubov Ivanova.

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

2.1 The author submits that he is a member and one of the leaders of the political opposition in Kyrgyzstan. Since 1990, he has been Minister of Interior, Vice-President, Minister of National Security, Governor of the Chuysk region and Mayor of the capital

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada and Mr. Krister Thelin.

Bishkek. In March 1999, he resigned as Mayor of Bishkek and founded the “Ar-Namis” political party (Party of Dignity). The party openly criticized the presidential policy and proposed different measures to reform the country. As a result he was subjected to persecution.

2.2 In February 2000, the population of the Kara-Buurinsk electoral district proposed his candidature for the Parliamentary elections. The author affirms that on the first turn of the elections he was in fact elected, but due to fraud, he was defeated by a pro-governmental candidate. On 12 March 2000, the author announced his decision to stand for President at the October 2000 elections. On 22 March 2000, he was arrested by the security services. Allegedly, the arrest provoked protest demonstrations in the Kara-Buure region and in Bishkek. In the night of 4 April 2000, some 500 policeman dispersed the “hunger strikers” by force and arrested nine persons, who received administrative fines.

2.3 The author was allegedly arrested by the Chief of the Second Investigation Department of the then Ministry of National Security (now National Security Service, NSS) and was charged with malpractice in office while he acted in an official capacity in 1997-1998. He was placed in pre-trial detention, upon authorization of the Deputy Prosecutor General. He was not brought before the prosecutor when he approved the placement on pre-trial detention, nor was he brought before a judge or other official empowered to exercise judicial power.

2.4 The author appealed against the pretrial detention decision with the Ministry of the National Security and the Office of the Prosecutor General, but his appeals were rejected. He then appealed to the Pervomaisk District Court in Bishkek. On 30 March 2000, the Court allegedly examined the appeal in the absence of the author and his lawyer, and confirmed the decision to keep him in detention. The author requested a supervisory (*nadzor*) review of his detention by the Supreme Court. The Supreme Court rejected the request on 5 April 2000. Furthermore, his lawyers requested his release several times in the Bishkek Military Court, to no avail.

2.5 On 7 August 2000, the Bishkek Military Court acquitted the author. On 11 September 2000, the Military Court of Kyrgyzstan annulled this judgment and sent the case back for re-examination. On 16 September 2000, the author’s lawyer appealed under the supervisory procedure with the Supreme Court against the decision of the Military Court of Kyrgyzstan. On 20 September 2000, a three-judge panel of the Supreme Court rejected the request for review.

2.6 On 22 January 2001, the Bishkek Military Court, in closed session, found the author guilty of malpractice in office while he acted in an official capacity and sentenced him to seven years of imprisonment in the colony of strict regime with confiscation of property. The author was also deprived of his military grade of “major-general”. No new evidence was produced in the retrial and the second judgment was based on exactly the same facts and evidence as the judgment that acquitted him.

2.7 The author and his lawyers appealed against this judgment to the Military Court of Kyrgyzstan. The appeals were rejected by the Court on 9 March 2001. On 19 July 2001, the Supreme Court rejected the author’s and his lawyer’s claims filed under the supervisory procedure. The author then filed a complaint to the Constitutional Court with a request to declare the court’s decisions in his regard unconstitutional. On 11 June 2002, the Constitutional Court rejected the request for a constitutional review.

2.8 According to the author, in all the above appeals, he claimed violations of his right to a fair and public trial by a competent, independent and impartial tribunal and his right to be presumed innocent, and of his rights as a defendant, including the right to call witnesses on his behalf. He also claimed that he was discriminated against on political grounds.

2.9 On 26 July 2001, after the examination of his appeal by the Supreme Court on 19 July 2001, he was charged again for malpractice in office, for the period 1993-1999. Notwithstanding the fact that he was already detained, a new decision for pretrial detention was issued against him on 26 July 2001, upon authorization of the Deputy Prosecutor General. Once again, the author was not brought before the Prosecutor nor before a judge or a person authorized to exercise judicial power. He decided not to appeal against this decision of pretrial detention, because of the ineffectiveness of any legal avenue.

2.10 On 8 May 2002, the Pervomaisk District Court (Bishkek) found the author guilty of malpractice in office and sentenced him to 10 years of imprisonment (taking into account the not yet fully served prison term under the previous judgment), with confiscation of property and a prohibition to hold any position within the State or local administration for a period of three years after serving the sentence.

2.11 The author appealed the judgment to the Bishkek City Court and on 11 October 2002, the court rejected the appeal. The author then complained to the Supreme Court. On 15 August 2003, the Supreme Court rejected his request for supervisory judicial review.

2.12 In his complaints to the Bishkek City Court and to the Supreme Court, he claimed that his rights to a fair and public trial by a competent, independent and impartial tribunal, his right to be presumed innocent, and his rights as a defendant, were violated.

2.13 Finally, a third criminal case was opened against him on 6 February 2001, for malfeasance in office concerning the period 1994-1995.

2.14 On 6 February 2001, while he was in detention, he was presented with new charges and again a constraint measure in the form of detention was selected, despite the fact that he was already in detention, which was still in force at the time of the submission of the present communication. From 2001 to 2003, his detention was constantly prolonged by the Investigation Department of the National Security Service, with the General Prosecutor's Office approval. The author repeatedly appealed with the General Prosecutor's Office against the decisions to prolong his preventive detention, claiming a violation of article 9 of the Covenant, but all his appeals were rejected. The appeal to courts was not necessary because of their ineffectiveness.

### **The complaint**

3.1 The author claims that he is a victim of violation of article 7 of the Covenant, because he was kept in the buildings of NSS from 22 March to 7 August 2000, and again from 22 January 2001 to April 2003 (when he was transferred to a penitentiary colony). During the time of his detention, he was not allowed any correspondence and communication, i.e. he was kept without any contact with the outside world and thus virtually held incommunicado. His wife and relatives tried to visit him several times, but were systematically denied access to him. The author quotes resolution 1997/38 of the Commission for Human Rights, paragraph 20, where the Commission stated that the prolonged preventive detention without a right of correspondence and communication may contribute to the commission of acts of torture and may, by itself, constitute a form of cruel, inhuman and degrading treatment. He also refers to the Committee jurisprudence in Communication No. 458/1991, *Mukong v. Cameroon*, on incommunicado detention.

3.2 Article 9, paragraph 1, is said to have been violated as the author was arrested on 22 March 2000 while he was under treatment in hospital, as it was suspected he would obstruct the investigation or escape. The author affirms that the decision to detain him was unlawful, as the investigators had absolutely no evidence that he wanted to escape or to obstruct the inquiries. He affirms that his preliminary detention in 2000 and in 2001-2002 was unreasonable and unnecessary in his case.

3.3 The author claims that his rights under articles 9, paragraph 3, read together with article 2, paragraphs 1 and 2, were also violated, because the investigators' decision to place him in pretrial detention was confirmed by a procurator – i.e. a representative of the executive branch on 22 March 2000, in his absence, and because he was not brought before a judge or other officer authorized by law to exercise judicial power. On 30 March 2000, the District Court rejected the appeal against the prosecutor's decision also in the author's absence. Furthermore, the Supreme Court refused to examine his claims regarding his detention, arguing that the criminal investigation was still pending.

3.4 The author claims that article 9, paragraph 1, was also violated as he was sentenced to 10 years of imprisonment because the tribunals miscalculated his sentence. According to him, the courts amalgamated the sentences wrongly and did not take into consideration the time he spent in pretrial detention. Because of this, his anticipated release would only be possible after 12 November 2005, i.e. after the date of the Presidential elections.

3.5 It is claimed that in violation of article 9, paragraph 4, the author was kept in an investigation detention centre since 6 February 2001, due to the opening of a third case against him. His detention was prolonged on several occasions between 2001 and 2003 by the investigators, and with the prosecutor's authorization, but in absence of any judicial control.

3.6 The author also claims that he is a victim of violation of article 14, paragraph 1, as his case was examined by a military court in closed meetings, in violation of the provisions of the Covenant and applicable national legislation. Neither international monitors nor journalists, nor members of his political party were allowed in the courtroom. According to the court, this was due to the limited space available. However, the author claims that hearings took place in the military hall which could accommodate hundreds of people. According to him, the investigation classified his case file as secret without giving any grounds. He adds that the judges were partial and that the judge issued a 63-page judgement within just three hours. His requests for additional expertise, additional investigation and recusal of judges were ignored. His case was examined by a military court although the crimes in question were concerning malpractice in office. He adds that military courts do not meet the standards of independence.

3.7 The author claims that his right to be presumed innocent (article 14, paragraph 2) was violated, as immediately after his resignation as Mayor of Bishkek, the authorities began to persecute him and to use national media to portray him as a criminal. Allegedly, the documentary "Corruption" was produced and financed by the presidential administration, in which the Deputy Chairman of the NSS explained the charges against the author and showed alleged inculpatory evidence before the investigation ended. The film was broadcasted several times on national television and on the Russian NTV Channel. A group of Russian journalists was allowed to study the criminal case file and they allegedly used the information afterwards to prepare critical articles against the author.

3.8 The author also alleges that article 14, paragraph 3 (b), was violated because his lawyers were given limited time to study the evidence against him. The lawyers requested to be given additional time for the preparation of the defence but their requests were allegedly ignored by the prosecution and the courts. The lawyers were not allowed to excerpt or copy the case file and could work on the file only in the NSS and in court. While in detention, the author was unable to consult his lawyer privately, but only through interphone. The premises where his conversations with the lawyer took place were equipped with listening devices and were cold in winter.

3.9 The author claims that article 14, paragraph 3 (c), was violated because he was judged twice for malpractice in office and a third set of criminal proceedings was still pending at the time of submission of the present communication, on the same grounds.

Despite the fact that his lawyers requested to join the three cases and to examine them together on several occasions, the courts refused to link them in order to make him appear as a dangerous recidivist. The author's right to be judged promptly was thus violated.

3.10 The author states that during the investigation and in court he requested to be represented by a lawyer from Russia. However this request was refused because he was a foreign national, notwithstanding that the provisions of the Law on advocacy and the agreement between the Russian Federation and Kyrgyzstan authorized this. In order to participate in the author's case and study the case file the lawyers had to get permission from the NSS by presenting their full CVs and filling out a special form. During the proceedings, a criminal case for dissemination of State secrets was opened against one of his lawyers, allegedly to enfeeble the author's defence. He further submits that the lawyer, who participated from the beginning of the proceedings, was sick during the hearing at the Bishkek city court and requested to postpone the hearing. However, the court ignored the request arguing that the author had another lawyer. This one, however, was not well familiarized with his case file. The above constitutes, in the author's view, a violation of articles 14 and in particular 14, paragraph 3 (d), of the Covenant.

3.11 The author claims that in violation of article 14, paragraph 3 (e), the author was not allowed to examine witnesses against him in court, as the courts refused to call them without justifying their refusal. He claims that he was not allowed to make a copy of protocols of court hearings which could prove his requests.

3.12 The examination of the author's case under the supervisory (*nadzor*) procedure by the Supreme Court took place in his and in his lawyers' absence, although with the participation of a prosecutor. He claims that under section 88 of the Constitution and section 42 of the Criminal Procedure Code, the author had a right to participate in court hearings. His appeals to this effect were ignored, in violation of article 14, paragraph 5, of the Covenant.

3.13 According to the author, article 15 was violated because he was found guilty without reason for "abuse of power" during his tenure as military chief - a crime for which he wasn't charged during the investigation. While he had been charged under section 177, part 2, of the Criminal Code, the judgement of 22 January 2001 found him guilty under section 266, part 1, of the Criminal Code. Such requalification was illegal under section 264 of the Criminal Procedure Code. He adds that at the time of the judgement, the acts under section 266, part 1, no longer constituted a crime in violation of article 15 of the Covenant. He also adds that one of the crimes he was charged for under section 169 of the Criminal Code does not foresee an element of the crime which existed in the previous edition of the Criminal Code of 1960. Therefore, the author argues that he was convicted for a crime which did not exist in the Criminal Code in force at the time of conviction.

3.14 Finally, the author claims a violation of article 19, paragraphs 1 and 2, and article 25 (a), stating that he was arrested, charged and sentenced exclusively on political grounds, because of his criticism of the regime in place and in order to prevent his participation in the presidential elections. He adds that this was confirmed by the International League for Human Rights and other organizations. He was a nominee for the Sakharov award for "freedom of opinion" as a prisoner of conscience.

#### **State party's observations**

4.1 On 20 June 2005, the State party submitted that the decision of the Supreme Court of 6 April 2005 confirmed the acquittal of the author by the Military Court of the Bishkek of 7 August 2000. It also submitted that the decision of the Military Court of 11 September 2000 as well as those of the Military Court of Bishkek of 22 January 2001, the Judicial

Collegiums of Military Court of 9 March 2001 and of the Supreme Court of 19 July 2001 were annulled.

4.2 Furthermore, the decision of the Supreme Court of 11 April 2005 annulled the sentence of the Pervomaisk District Court of 8 May 2002, the decision of the Bishkek City Court of 11 October 2002 and the decision of the Supreme Court of 15 August 2003 for the absence of criminal elements in his actions.

#### **Author's comments**

5. On 6 August 2005, the author acknowledged that under the decisions of the Supreme Court of 6 and 11 April 2005, he was acquitted. However he maintains that such decisions do not affect the violations of his rights under the Covenant. The violations of his rights and the shortcomings in the legal system in Kyrgyzstan were not examined by the Supreme Court on the merits and no measures were taken to provide him with effective means of protection.

#### **State party's further comments**

6.1 On 23 March 2010, the State party reiterates its previous submission that the author was acquitted and the sentence against him as well as all subsequent judicial decisions confirming the sentence were annulled.

6.2 The State party adds that under section 316, part 2, and section 225, part 2, of the Criminal Procedure Code acquittal or cancellation of the sentence due to absence of criminal elements means that the convicted person is innocent and leads to full rehabilitation including compensation. Under section 422 of the Criminal Procedure Code the lawsuit for compensation for moral damage can be initiated under civil proceedings.

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

##### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement.

7.3 In the absence of information on the grounds for the author's acquittal, the Committee is not in a position to conclude that there was a failure on his part to exhaust domestic remedies. Moreover, it observes that the State party raised no concerns in this regard.<sup>7.4</sup> The Committee notes that the author claimed violation of articles 19, paragraphs 1 and 2, and 25, (a), as he was arrested, charged and sentenced exclusively on political grounds, because of his criticism of the regime in place and in order to prevent his participation in the presidential elections. The Committee considers that the author did not provide sufficient details to illustrate his claims, thus it considers the claims as insufficiently substantiated for purposes of admissibility under article 2 of the Optional Protocol.

7.5 The Committee notes the author's allegations that article 15 was violated because he was found guilty of a crime for which he wasn't charged during the investigation. The legal qualification of his action that fell under section 177, part 2 (abuse of authority), of the Criminal Code were changed to section 266, part 1 (abuse of authority), by a military personnel), of the Criminal Code. He argues that such a change in legal qualification

contradicts section 264 of the Criminal Procedure Code. He also claimed that at the time when his sentence was issued, the acts under section 266, part 1, no longer constituted a crime. He adds that he was also charged under section 169 of the Criminal Code, which does not foresee the element of the crime which existed under section 87 of the 1960 Criminal Code. Therefore, the author argues that he was convicted for a crime which did not exist in the Criminal Code in force at the time of conviction. The Committee notes however that the author did not provide sufficient details on the relevance of section 87 of the old Criminal Code to his case and failed to substantiate his claim that section 266, part 1, of the old Criminal Code was applied illegally. In the absence of any further information, the Committee considers that the allegations under article 15 are insufficiently substantiated for purposes of admissibility under article 2 of the Optional Protocol.

7.6 As to the alleged violation of article 14, paragraph 3 (a), the Committee considers that the author did not explain the reasons why he considers that this provision has been violated. The Committee therefore declares this allegation inadmissible for lack of substantiation under article 2 of the Optional Protocol.

7.7 In connection with the claims related to articles 2; 7; 9, paragraphs 1, 3, and 4, in conjunction with article 2, paragraphs 1 and 2; and 14, paragraphs 1, 2, 3 (b)-(e), and 5, of the Covenant, the Committee considers that they have been sufficiently substantiated for the purposes of admissibility. The Committee, therefore, declares them admissible.

#### *Consideration of the merits*

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee notes the author's claim under article 7 that during the time of his detention in the buildings of State NSS from 22 March to 7 August 2000, and again from 22 January 2001 to April 2003, he was not allowed any correspondence and communication, and was kept without any contact with the outside world. The State party did not comment on this allegation. The Committee recalls its general comment 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, which recommends that States parties should make provision against incommunicado detention<sup>1</sup> and notes that total isolation of a detained or imprisoned person may amount to acts prohibited by article 7. In view of the above, the Committee finds that the author has been subjected to cruel, inhuman and degrading treatment, in violation of article 7 of the Covenant.

8.3 The Committee notes the author's allegations under article 9, paragraph 1, that the decision to detain him was unlawful, as the investigators had no evidence that he wanted to escape or to obstruct the inquiries. He adds that while calculating his prison term, the courts amalgamated the sentences wrongly and did not include his term in pretrial detention. The Committee recalls its jurisprudence that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances. Further, remand in custody must be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime. The State party has not shown that these factors were present in the instant case.<sup>2</sup> In the absence of any further information, the Committee concludes that there has been a violation of article 9, paragraph 1, of the Covenant.

<sup>1</sup> *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40)*, annex VI, sect. A, para. 11.

<sup>2</sup> Communication No. 305/1988, *Alphen v Netherlands*. Views adopted on 23 July 1990.

8.4 As for the author's claims under articles 9, paragraph 3, read together with article 2, paragraphs 1 and 2, that the decision to place him in pretrial detention was made by a prosecutor, i.e. a representative of the executive branch, under the national legislation, in his absence, and that he was not brought before a judge or other officer authorized by law to exercise judicial power. The Committee notes that the State party has not provided any information, showing that the prosecutor had the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3, of the Covenant. In these circumstances, the Committee concludes that the facts as submitted reveal a violation of the author's rights under article 9, paragraph 3, of the Covenant.

8.5 The author also claimed violation of article 9, paragraph 4, as he was allegedly kept in an investigation detention centre since 6 February 2001, due to the opening of a third case against him. His detention was allegedly prolonged on several occasions between 2001 and 2003 by the investigators, and with the prosecutor's authorization, but in absence of any judicial control. The author allegedly appealed with the General Prosecutor's Office, but all his appeals were rejected. According to him, the appeal to courts was not necessary because of their ineffectiveness. The State party did not comment on these allegations. In the absence of any further information, the Committee concludes that there has been a violation of article 9, paragraph 4, of the Covenant.

8.6 The author also claims that he is a victim of violation of article 14, paragraph 1, as his case was examined by a military court in closed meeting; the investigation classified his case file as secret without giving any grounds and the 63-page judgement was prepared within three hours, putting into question the partiality of the judges. He adds that military courts do not meet the standards of independence. The Committee recalls its jurisprudence that the court must provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, for example, potential public interest in the case, duration of the oral hearing and the time the formal request for publicity has been made.<sup>3</sup> The State party did not provide any comments on these allegations. In such circumstances, the Committee considers that the trial of the author did not meet the requirements of article 14, paragraph 1.

8.7 The Committee notes the author's allegations of violation of presumption of innocence, as the authorities allegedly used national media to portray him as a criminal; his lawyers were given only limited time to study the evidence, and "obstacles" were added to examine the additional evidence presented by the prosecution; he had been judged already two times for malpractice in office but a third set of criminal proceedings was still pending at the time of submission of the present communication, on the same grounds; his request to be represented by a lawyer from Russia was ignored, though allowed under the legislation; NSS created additional obstacles for lawyers' participation in the author's case; and finally he was not allowed to examine witnesses against him in court, as the courts refused to call them without justifying their refusal. The Committee notes that the State party did not provide any comments on any of these allegations. In the absence of any information from the State party, the Committee considers that due weight must be given to the author's allegations and concludes that there has been a violation of article 14, paragraphs 2, 3 (b), (c), (d) and (e), of the Covenant..

8.8 Regarding the claims that the examination of the author's case under the supervisory (*nadzor*) procedure by the Supreme Court took place in his and in his lawyers' absence, although with the participation of a prosecutor, the Committee notes that despite the fact that under the Criminal Procedure Code of the State party, the participation of the accused

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<sup>3</sup> Communication No. 215/1986, *van Meurs v The Netherland*. View adopted on 13 July 1990.

at the hearing of the supervisory review procedure is decided by the court itself, the State party failed to explain the reasons why it did not allow the participation of the author and his lawyers at the proceedings at the Supreme Court. In the absence of any other information, the Committee considers that there has been a violation of article 14, paragraph 5, of the Covenant.

9. 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 articles 7; 9, paragraphs 1, 3, and 4; and 14, paragraphs 1, 2, 3 (b), (c), (d), (e), and 5, of the International Covenant on Civil and Political Rights.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy including the payment of adequate compensation and initiation of criminal proceedings to establish responsibility for the author's ill-treatment under article 7 of the Covenant. The State party is also under an obligation to prevent similar violations in the future.

11. Bearing in mind that, by becoming a State 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 and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested 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.]

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