



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. 2697/2015*, **

<i>Communication submitted by:</i>	Ulan Nazaraliev (represented by counsel, Sardorbek Abdukhalilov)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	30 November 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure (now rule 92), transmitted to the State party on 7 December 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	5 July 2019
<i>Subject matter:</i>	Torture by police; lack of effective investigation; conditions of detention
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Torture; torture – prompt and impartial investigation; conditions of detention
<i>Articles of the Covenant:</i>	7, read alone and in conjunction with 2 (3) (a) and 10 (1)
<i>Article of the Optional Protocol:</i>	5 (2) (b)

* Adopted by the Committee at its 126th session (1–26 July 2019).

** The following members of the Committee participated in the examination of the communication:
Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin
Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki
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Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



1. The author of the communication is Ulan Nazaraliev, a national of Kyrgyzstan born in 1982. He claims that the State party has violated his rights under article 7, read alone and in conjunction with articles 2 (3) (a) and 10 (1) of the Covenant. The Optional Protocol entered into force for the State party on 7 January 1995. The author is represented by counsel.

The facts as submitted by the author

2.1 From 21 July to 15 November 2012, the author was kept in the temporary detention centre of the Department of Internal Affairs of the Ministry of Internal Affairs in the city of Jalalabad on charges of hooliganism and robbery under articles 234 (2) (1) and 168 (2) (1) and (3) and (4) (4) of the Criminal Code, respectively. The author describes the conditions of his detention as inhuman and degrading: detainees were kept in a basement area, comprising 10 cells with eight persons in each one. There was neither ventilation nor heating, which meant that it was extremely hot in summer and cold in winter. As there were no sanitary facilities, during the day the author and other inmates were taken to the toilets out in the yard without any privacy. Overall hygiene was bad and there was a high risk of infectious diseases. The temporary detention centre did not have medical staff.

2.2 On 4 November 2012, at approximately 6 p.m., the author informed the police officers that he had a headache. They gave him a razor blade saying that he could cut himself but nobody would help him. The author started to scream protesting against this kind of treatment by the officers. The officers hit him in the chest and then pinned him against the wall and started to choke him. As an act of protest, the author took out the razor blade and cut his left wrist.¹ When the ambulance arrived, the author received the necessary medical help. On 5 November 2012, his hand started bleeding again and he was taken to Jalalabad regional hospital for his wounds to be stitched.

2.3 On 6 November 2012, six police officers entered the author's cell in order to conduct an inspection. While conducting the inspection, the officers started to hit the author and his cellmates. When the author asked what was going on, one of the officers responded that they were conducting an inspection. The author was ordered to lie down on the floor and an officer climbed on top of him and started punching his head and ears, kicking him in the kidneys and genitals. The author's clothes and personal belongings, including medication and basic personal hygiene items, were thrown away during the inspection. In the afternoon, in the yard in which detainees were allowed to exercise, the author was thrown down on a mattress and subjected to two searches by police officers and his clothes were taken away. Then, the author was taken to one of the investigators' offices in the detention centre where they hit his head against the wall. Unable to bear the pain and in response to his ill-treatment, he unpicked the stitches of his wound, which started bleeding again. The police officers handcuffed him to a radiator. The author was left in that position for some time.

2.4 The next day, 7 November 2012, the author and other ill-treated detainees submitted complaints to the prosecutor's office of the city of Jalalabad. They accused the police officers of physical abuse and inhuman and degrading treatment in relation to their behaviour during the cell inspection of 6 November 2012.

2.5 On 8 November 2012, following the complaint, the author was transferred to the temporary detention centre of the Department of Internal Affairs in the Suzaksk District of Jalalabad Region (10 km away from the city of Jalalabad). During the transfer, the police officers mocked and humiliated the author, took his underwear down and photographed his genitalia. Despite the injuries visible on the body of the author, the police officers at the temporary detention centre admitted him without conducting a medical check-up.

2.6 On the same day, a forensic medical expert examined the author. According to the forensic medical report, the author had suffered "minor injuries". However, the expert, in the forensic medical report issued on 14 November 2012, did not exclude the possibility that the injuries had been self-inflicted. According to the author, he subsequently suffered

¹ The author further explains that, during the inspection that took place on 6 November 2012, several detainees were beaten and subsequently cut their own wrists in protest at their ill-treatment.

from the consequences of the injuries but was not provided with the necessary medical assistance.

2.7 On 10 November 2012, the author went on a hunger strike to protest against his physical abuse and humiliation. He stopped his strike only after he met with the deputy prosecutor of the Jalalabad Region and submitted his complaint to him on 14 November 2012. On 18 November 2012, the investigator in charge of the preliminary examination refused to initiate a criminal case against the officers at the detention centre owing to a lack of *corpus delicti*. The investigator concluded that the author's allegations had not been confirmed. On 20 November 2012, the Jalalabad Region prosecutor's office (in the framework of institutional supervision) quashed ex officio the decision and ordered an additional preliminary examination, which was entrusted to the same investigator. On 30 November 2012, the investigator refused once again to initiate a criminal case against the officers owing to a lack of *corpus delicti*. The author claims that, during his beatings, the police officers moved the video cameras so that they faced towards the ceiling, thus making it impossible to record his ill-treatment. This explains why the video recordings from different locations in the detention centre (the cells, corridors, yard and the investigators' office) are missing from the materials collected during the preliminary examination.

2.8 In the meantime, the Jalalabad Region prosecutor's office initiated a disciplinary investigation and, on 21 November 2012, the prosecutor and the investigator involved in the author's case received a "strict warning".

2.9 From 30 November until 10 December 2012, due to a strong pain in the head, the author was hospitalized in Jalalabad regional hospital and diagnosed with closed brain injury and high blood pressure.² The author's hospital file (that is, his medical card) indicates, as the principal diagnosis, that the author was admitted to the facility's neurological ward with closed brain injury, specifying, furthermore, that he had sustained a concussion.

2.10 On 13 December 2012, the author filed a complaint with the city court of Jalalabad requesting the reversal of the decision not to initiate criminal proceedings in relation to his case, which had been adopted by the prosecutor. On 4 February 2013, the court decided to send the complaint back to the prosecutor's office, asking it to carry out a comprehensive investigation, including questioning witnesses, obtaining video recordings, etc.

2.11 However, on 8 February 2013, the prosecutor's office appealed the decision of the city court of Jalalabad to the regional court of Jalalabad, asking it to reverse the lower court's decision. On 27 March 2013, the regional court upheld the decision of the city court. On 18 April 2013, the prosecutor's office submitted a complaint to the Supreme Court under the supervisory review procedure. On 22 May 2013, the Supreme Court reversed the decisions of the courts of first and second instances. In its decision, the Supreme Court supported the prosecutor's office in its decision to refuse to initiate criminal proceedings. As the decision of the Supreme Court is final and cannot be appealed, the author submits that all domestic remedies available to him have been exhausted.

The complaint

3.1 The author claims that the State party has violated his rights under article 7, read alone and in conjunction with articles 2 (3) (a) and 10 (1) of the Covenant.

3.2 The author claims that the treatment inflicted on him by police officers amounts to torture in violation of article 7 of the Covenant. The torture was exacerbated by the conditions in which the author was detained and the failure to provide him with medical assistance when needed. The State party's failure to take measures to protect the author from torture and its failure to conduct an impartial, effective and thorough investigation into the torture of the author and to provide access to effective remedies amount to a violation of article 7, read alone and in conjunction with article 2 (3) of the Covenant.³

² The author provided a copy of his medical card.

³ The author refers to the Committee's jurisprudence, notably the cases of *Marinich v. Belarus* (CCPR/C/99/D/1502/2006) and *Lantsova v. Russian Federation* (CCPR/C/74/D/763/1997).

3.3 In addition, the conditions in which the author was detained were inhuman, in violation of article 10 (1) of the Covenant.

State party's observations on admissibility and the merits

4.1 On 21 April 2017, the State party submitted its observations on admissibility and the merits. On 6 November 2012, police officers conducted an inspection of the temporary detention centre of the Department of Internal Affairs in the city of Jalalabad, in which the deputy prosecutor of the city of Jalalabad took part. In the course of the inspection, forbidden objects, such as mobile telephones, chargers, batteries and headphones, were found in the cells and seized.

4.2 On 7 November 2012, 19 of the 43 detainees at the temporary detention centre, including a minor, expressed their discontent with the actions of the officers of the Department of Internal Affairs. In protest against the seizures, the detainees injured themselves, cut their arms, necks and abdomens, and announced a hunger strike. They were provided with first aid by medical practitioners.

4.3 As regards the author's claims about the violence against him, the State party submits that the author filed a complaint with the prosecutor's office of the city of Jalalabad, requesting the prosecution of a police officer who allegedly beat him in his cell on 6 November 2012. On 14 November 2012, a forensic medical examination was carried out, according to which there were no signs of beatings or violence on the author's body, except the cuts on his left wrist, which were self-inflicted.

4.4 As a result of an investigation of 30 November 2012, the prosecutor's office refused to initiate criminal proceedings against the officer on the ground that the latter's actions did not constitute a crime. The author's counsel appealed the decision of the prosecutor's office to the city court of Jalalabad. The appeal was allowed on 4 February 2013 and the decision of the prosecutor's office was overturned. The regional court of Jalalabad upheld the ruling of the city court. However, the Supreme Court overturned the aforementioned court decisions on 22 May 2013.

4.5 According to the Criminal Procedure Code, the higher courts review the lawfulness and validity of the lower courts' decisions. The State party maintains that the Supreme Court has conducted such a review; its ruling is final and cannot be appealed, according to article 96 of the Constitution of Kyrgyzstan.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 23 June 2017, the author, commenting on the State party's observations, submitted that the State party had failed to address his claims.

5.2 In particular, the State party does not contest that, on 6 November 2012, an inspection of the cells took place in the temporary detention facility of the Department of Internal Affairs in Jalalabad and that the author had injuries on his body. The State party further confirms that the author first applied to the prosecutor's office requesting the opening of a criminal case against the law enforcement officers who had used physical violence against him, and subsequently appealed to the court challenging the results of the ineffective and inconclusive investigation. The State party also confirms that the author has exhausted all available domestic remedies.

5.3 The author contends that the State party has failed to explain how the investigation of the author's allegations of torture was effective and comprehensive if several investigative steps, such as questioning witnesses and obtaining video recordings, were not carried out.

5.4 In his communication, the author draws the Committee's attention to the violation by the State party of article 7, read alone and in conjunction with article 2 (3), of the Covenant. The State party does not even attempt to prove that the preliminary examination into the author's allegations of torture (which led to a refusal to open criminal proceedings against the police officer) was effective, thorough and comprehensive. Thus, the author claims that the preliminary examination, which concluded with a refusal to open a criminal case, was ineffective and, therefore, the State party did not fulfil its obligation to provide

the author with an effective remedy within the meaning of article 2 (3) of the Covenant. In particular, the investigation conducted by the prosecutor's office was not effective and thorough, because the investigator focused on interviewing only police officers, without even questioning the author. The investigation materials contain only the explanations of the officers from the temporary detention centre of the Department of Internal Affairs in the city of Jalalabad and the statements of some detainees who were prepared to contradict such accounts, but who later withdrew their previous complaints about torture and inhuman treatment.

5.5 Besides, during a preliminary examination it is not possible to carry out certain investigative actions, such as identification parades, interrogations or searches, and thus to collect evidence in the most effective way, because these investigative actions can be taken only after opening a criminal case. Furthermore, a preliminary examination does not produce procedurally admissible evidence. Thus, false testimony does not carry with it criminal responsibility and explanations given at that stage could be changed later on without any consequences. Therefore, the statements of the police officers cannot be regarded as witness testimony since they were not warned of criminal liability for perjury.

5.6 In addition, the author reiterates his claim that the materials collected did not include either closed circuit television footage of the detention centre's premises (cells, corridors, exercise yard, the investigators' office or other areas of surveillance), or a protocol establishing the viewing of such video surveillance materials. According to the author, during his beating, police officers repositioned all the surveillance cameras, and thus prevented any evidence being recorded. This explains the lack of video footage of the detention centre's internal premises.

5.7 The State party does not contest the fact that the author appealed the outcome of the ineffective preliminary examination. The first and second instance courts assessed the circumstances of the case, the inaction of the investigator and his conclusion that the police officers' explanations were reliable. The courts did not agree with this conclusion because the investigator did not justify why the police officers' testimonies were more truthful. From the point of view of objectivity and fairness, the investigator had to evaluate each testimony during the examination. The police officers denied the use of force against the author, as they wished to avoid criminal prosecution. However, under the supervisory review procedure, the Supreme Court quashed the lower courts' decisions and upheld that of the prosecutor's office to refuse to initiate criminal proceedings. The author notes that the supervisory review of judicial decisions in the State party is not an effective remedy, as it seriously limits the right of access to a court and the principle of legal certainty.

5.8 The author affirms that the contradictory claims in the present case could only be evaluated after initiating criminal proceedings and a number of investigative actions, such as carrying out a psychiatric assessment, further interviews and a face-to-face encounter between the author and the police officers concerned.

5.9 The author further contends that he was kept in inhuman conditions in the cells of the detention centre of the Department of Internal Affairs in the city of Jalalabad. Conditions in the detention facility were such that he was treated inhumanly and without respect for his dignity. However, the State party does not respond at all to these allegations of a violation of article 10 (1) of the Covenant.

Additional observations

From the State party

6.1 On 17 January 2018, the State party reiterated that, on 6 November 2012, an inspection of the temporary detention centre of the Department of Internal Affairs in the city of Jalalabad had been conducted by police officers with the aim of finding and seizing forbidden objects, such as mobile telephones, chargers, batteries and headphones.

6.2 As regards the author's allegations of physical violence inflicted on him, the State party again submits that he filed a complaint with the prosecutor's office of the city of Jalalabad, asking it to prosecute an officer who had allegedly beat him in his cell. A full and impartial investigation was conducted in that regard. According to a forensic medical

examination report issued on 14 November 2012, there were no signs of beatings or violence on the author's body, except cuts on his left wrist, which had been self-inflicted. Based on the findings of the preliminary examination, the prosecutor's office refused to initiate criminal proceedings against the police officer owing to a lack of *corpus delicti*. The author appealed the decision of the prosecutor's office, which, however, was upheld by the Supreme Court on 22 May 2013.

6.3 The State party concludes that the author's comments on the State party's observations are unfounded.

From the author

6.4 In his comments, submitted on 19 March 2018, the author disagrees with the State party's observations. He argues that the State party does not provide any information regarding the character of the inspection of the detention centre, the methods used, the number of police officers involved and the use of special means during the operation. The author claims that the presence of a prosecutor during such actions cannot guarantee that detainees will not be abused as the prosecutor represents the public prosecution in court against such persons in detention. The absence of such critical information illustrates the arbitrariness of inspections in closed institutions and the violation of the rights and freedoms of persons deprived of their liberty.

6.5 Furthermore, the prosecutor's office once again confirmed that the author, together with 19 other detainees, had lodged a complaint with it. The author asserts that this complaint was about the ill-treatment and physical violence during the inspection of the detention cells and not about the seizure of prohibited items as alleged by the State party. The author requested measures against the police officers who tortured him in order to punish him, providing the names of the police officers who had conducted the inspection and subjected him to ill-treatment, the circumstances and the specific acts of violence.

6.6 The author's complaint of ill-treatment during the inspection was not handled properly by the prosecutor's office. The investigator did not take all the necessary investigative steps to establish the true reasons for the author's self-inflicted harm (the cuts). He did not investigate the author's allegations of torture. The reason why the author cut himself was in order to attract attention and to protest against the beatings that he had been subjected to by the police officers. The author was tortured as a form of punishment for his protest.

6.7 Finally, the author reiterates that he has exhausted all the available domestic remedies.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 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.

7.3 The Committee takes note of the author's claim that he has exhausted all the domestic remedies available to him. In the absence of an objection by the State party, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met for the purposes of admissibility with regard to the author's claims under article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant. The Committee observes, however, that the author has not demonstrated that he has exhausted the domestic remedies with regard to his claim that the conditions in which he was detained for four months were inhuman, in violation of article 10 (1) of the Covenant. Therefore, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have

not been met for the purposes of admissibility and considers the claim inadmissible for non-exhaustion of domestic remedies.

7.4 The Committee considers that the author has sufficiently substantiated the remaining claims under article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant, for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its examination of the merits.

Consideration of the merits

8.1 The Committee has considered the case in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee first takes into consideration the author's allegations that he was tortured and otherwise mistreated by police officers on several occasions, in particular that, prior to the inspection of the cells, he had been given a razor blade and told he could cut himself and subsequently hit in the chest and choked while being pinned against a wall, and during the inspection he was hit and his head banged against a wall. In this regard, the Committee notes the author's explanation that, during his beating, police officers repositioned the surveillance cameras to make it impossible for any evidence to be recorded. The Committee also notes the State party's conclusion that the author's allegations have not been confirmed. The Committee takes note that the findings of the forensic medical examination indicate "minor injuries" and suggest self-inflicted harm (the cuts). The Committee observes, however, that, while still in custody, the author was hospitalized for 10 days and diagnosed with a closed brain injury, a diagnosis that is consistent with the author's description of the type of violence that he was subjected to while in the detention centre, namely, that an officer punched the author on the head and hit his head against a wall. In the circumstances of the present case, and in particular in the light of the State party's failure to explain how the author came to sustain the above-mentioned injury while in detention, due weight should be given to the author's allegations. Therefore, the Committee finds that he was the victim of a violation of article 7 of the Covenant.

8.3 Regarding the State party's obligation to properly investigate the author's claims of torture, the Committee recalls its jurisprudence according to which a thorough criminal investigation and consequential prosecution are necessary remedies for violations of human rights, such as those protected by article 7 of the Covenant.⁴ The Committee notes that the material on file does not allow it to conclude that the preliminary examination into the allegations of torture was carried out thoroughly and effectively. In the present case, the inquiry conducted lacked impartiality, since the investigator interviewed law enforcement officers from the temporary detention centre, but failed to interview the author. In addition, the Committee notes the author's statement that the materials collected through the preliminary investigation did not include any recordings of the detention centre premises or a protocol establishing the viewing of such video surveillance materials, which was neither explained nor contested by the State party. The Committee also observes that the State party limited itself to a preliminary examination, instead of launching a formal criminal investigation procedure. In the circumstances of the present case, the Committee concludes that the facts before it also disclose a violation of the author's rights under article 7, read in conjunction with article 2 (3) (a), of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 7, read alone and in conjunction with article 2 (3) (a).

10. Pursuant to 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: (a) conduct a thorough and effective investigation into the author's allegations of torture and, if confirmed, prosecute and punish

⁴ 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; and general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 18.

those responsible for the torture of the author; and (b) provide the author with adequate compensation for the violations suffered. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

11. 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 and enforceable 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. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.
