



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. 2522/2015*, **, ***

<i>Communication submitted by:</i>	Khalilzhan Khudayberdiev (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Dates of communication:</i>	2 September 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 8 January 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	8 November 2019
<i>Subject matter:</i>	Denial of fair trial; discrimination on the ground of ethnic origin
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Fair trial; presumption of innocence; discrimination on the ground of ethnic origin
<i>Articles of the Covenant:</i>	2 (1); 14 (1), (2), and (3) (d) and (e); 17 (1); and 27
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Khalilzhan Khudayberdiev, a national of Kyrgyzstan, born in 1952. He claims that the State party has violated his rights under articles 2 (1); 14 (1), (2), and (3) (d) and (e); 17 (1); and 27 of the Covenant. The Optional Protocol entered into force for the State party on 7 January 1995. The author is not represented by counsel.

* Adopted by the Committee at its 127th session (14 October–8 November 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 Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany and Héléne Tigroudja.

*** An individual opinion by Committee member Shuichi Furuya (dissenting) is annexed to the present Views.

The facts as submitted by the author

2.1 The author is an ethnic Uzbek from the city of Osh, Kyrgyzstan. He is a founder and former director of the television channel OshTV where he worked for 19 years. In May and June 2010, numerous attacks against ethnic Uzbeks took place in the cities and regions of Osh and Jalal-Abad in the south of Kyrgyzstan. The author was accused of organizing these events and participating in them.

2.2 During the period in which these events took place, the author was in Osh. His television station aired footage of a public rally that took place on 15 May 2010 in front of People's Friendship University, named after A. Batyrov, in Jalal-Abad. The rally was filmed by the station's freelance video operator. The rally was attended by the leader of the local Uzbek community, K. Batyrov, and the regional governor, Mr. Asanov, who gave speeches about the need for inter-ethnic unity. The broadcast was aired once on the evening of 16 May 2010. Later, this footage was considered by the courts as a catalyst for the subsequent inter-ethnic clashes.

2.3 On several occasions in May and June 2010, the author received threats from unknown people who he thinks were Kyrgyz nationalists. On 9 July 2010 he was detained and later released by National Security Service agents who threatened to arrest him. In the beginning of July, the author's company OshTV was seized by the mayor of Osh, Mr. Koshbayev. Fearing for his own and his family's life and safety, the author left for the Russian Federation in July 2010. In November 2010, the author and his family moved from the Russian Federation to the United States of America, where they were granted asylum.

2.4 The author refers to the report of the International Independent Commission for Inquiry into the events in the south of Kyrgyzstan in June 2010. According to the report, the Commission found that the criminal investigations and trials related to the June events were marred by breaches of the fair trial rights laid out in the International Covenant on Civil and Political Rights; that there had been selective prosecution targeting the ethnic Uzbek minority; and that defence lawyers representing ethnic Uzbek defendants had been subject to improper interference and intimidation.¹ In 2013 and 2014, the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, in their concluding observations on the State party's fifth to seventh periodic reports (CERD/C/KGZ/CO/5-7) expressed concern about serious violations of rights of ethnic Uzbeks during investigations and trials in the aftermath of the events of June 2010.

2.5 On 16 June 2011, the parliament of Kyrgyzstan passed a resolution based on its own investigation into the events in the south of Kyrgyzstan in 2010. In paragraph 7 of the resolution, the author is listed as one of the organizers of these events, and he is named as a participant in nationalistic and separatist movements. In addition, paragraph 21 of the resolution includes a call for the confiscation of all property belonging to the leaders, organizers and participants of the 2010 events.

2.6 On 28 October 2011, the Jalal-Abad City Court sentenced the author in absentia to 20 years in prison and ordered the confiscation of his property for separatism, organization of mass disorders and killings, among other charges. The author was not informed of the trial and learned of the verdict through mass media.²

2.7 Although the trial court found him guilty of all charged crimes, the court could not show that the crimes had been personally committed by him. It could not tie him physically to the location where the crimes had occurred, the Jalal-Abad region, since the author had spent May and June 2010 in Osh.

¹ Kyrgyzstan Inquiry Commission, "Report of the Independent International Commission for inquiry into the events in the south of Kyrgyzstan in June 2010", p. iii, para. 9. Available at reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_490.pdf (accessed on 30 January 2020).

² The documents submitted show that, in his appeal dated 31 October 2011, the author stated that there had been motions to suspend the trial; however, the judge proceeded with the trial and rendered the verdict in absentia.

2.8 On 31 October 2011, the author appealed the decision of the trial court to the Jalal-Abad Regional Court. On 31 January 2012, the appellate court upheld the decision of the trial court.

2.9 On 24 March 2014, the author appealed to the Supreme Court of Kyrgyzstan under the supervisory review procedure. On 13 May 2014, the Supreme Court denied the author's appeal and upheld the decisions of lower courts.

2.10 The author submits that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author claims that the resolution passed by the parliament of Kyrgyzstan on 16 June 2011 denied him any prospects of a fair trial and the presumption of innocence. He submits that the resolution heavily influenced the outcome of the trial, which violated his rights under article 14 (2), and consequently violated his right under article 14 (1) to be judged by a fair and impartial tribunal.

3.2 The author claims that he was not notified of his trial and was sentenced in absentia, which violated his rights to be tried in his presence and examine witnesses against him, as contained in articles 14 (3) (d) and (e) of the Covenant.

3.3 The author alleges a violation of articles 2 (1) and 27 of the Covenant, claiming that the judgment against him was discriminatory in nature and had to do with his being an ethnic Uzbek.

3.4 The author claims that the State party violated his rights under article 17 (1) because his house and business were unlawfully confiscated by the State party.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 15 July 2015, the State party confirms that the author has exhausted all available domestic remedies. The State party notes that as a result of the revolution on 7 April 2010,³ many supporters of former President Bakiyev tried to use the fragile situation to return to power, and the threats of separatism and nationalism had substantially increased. The State party submits that the repeated broadcast of the rally of 15 May 2010 in Jalal-Abad became a catalyst of the bigger conflict. The rally was held entirely in Uzbek and was attended only by ethnic Uzbeks. During the rally, the leader of the local Uzbek community, Mr. K. Batyrov, declared that the Uzbek population had long been waiting for the moment and the time had come for their active participation in the political life of the country. He also declared that, if the interim Government was not able to establish an order within the country and justify the trust of people, they would overthrow it. The broadcast was repeatedly aired by the author's television channel and was also shared for the purposes of airing on another channel, Mezon-TV, which served as a powerful detonator at a time of general tension and instability in society. The State party refers to the report of the International Independent Commission for Inquiry into the events in the south of Kyrgyzstan in June 2010, which concluded that the tone of the speeches during the rally had expressed intense frustration and had inspired Uzbeks to be more bold in their aspirations. The State party also refers to the events in Teyit, the hometown of former President Bakiyev, where the State party alleges that the house of the former President was burned down by supporters of Mr. Batyrov. The State party submits that in the wake of the Teyit incident, the speech by Mr. Batyrov was seen by many Kyrgyz people as an act of aggression against them and the statehood of Kyrgyzstan.⁴ Therefore, the author fully understood the consequences of his actions and he was aware that they could lead to the mobilization of the Uzbek youth around separatist leaders.

³ The so-called People's April Revolution, which resulted in the ousting of Kyrgyz President Kurmanbek Bakiyev.

⁴ Kyrgyzstan Inquiry Commission, "Report of the Independent International Commission for inquiry into the events in the south of Kyrgyzstan in June 2010", para. 66. Available at reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_490.pdf.

4.2 With regard to the investigation of parliament into the events of May and June 2010 and to its resolution of 16 June 2011, the legislative branch of the Government has the power to discuss the results of the work of its fact-finding commissions. However, the discussions in the parliament will never be interpreted as interference in the independent work of the judicial branch because final decisions are always taken by courts.

4.3 Despite the author's claims of violations of articles 2, 14 and 17 of the Covenant, the Constitution of Kyrgyzstan prohibits any form of discrimination and arbitrary deprivation of housing, guarantees equality before the law and provides for a review of court decisions by a higher tribunal.

4.4 The author and others colluded with the president of the Uzbek national cultural centre in the Jalal-Abad region, Mr. K. Batyrov. In violation of the law on mass media, using television channels Osh TV and Mezon TV, the author and others actively assisted Mr. Batyrov in his action toward the violent seizure of power, inciting ethnic and interregional hatred, destruction of property, mass riots and killings.

4.5 On 17 May 2010, about 1,000 local residents gathered in Jalal-Abad and demanded that the Government immediately stop the criminal activities of Mr. K. Batyrov. On 19 May 2010, a crowd of about 2,000 protesters in Suzak district of Jalal-Abad region conducted a rally with the same demands. After the rally, the crowd approached the People's Friendship University and became involved in pogroms and mass riots. While approaching the university, the crowd was met with shots from supporters of Mr. Batyrov from inside the university. The clashes resulted in injuries to 74 people, 3 of whom later died. The State party considers that the above-mentioned actions by Mr. Batyrov and his accomplices resulted in the escalation of inter-ethnic conflicts among the population of Osh and Jalal-Abad regions.

4.6 Between 10 and 13 June 2010, violent clashes took place between members of the Uzbek and Kyrgyz populations of the Osh and Jalal-Abad regions, during which 638 people were injured and 76 people were killed. As a result, the prosecutor's office of the Jalal-Abad region opened a criminal case against several people, including the author, and charged them with attempted violent seizure of power; incitement of ethnic and interregional hatred with the aim of breaking up the territorial integrity of Kyrgyzstan; mass riots; and killings. During the pretrial investigation, neither the accused nor their legal representatives requested any additional investigation procedures. The State party submits that another defendant in the same trial was represented by a lawyer and indicates that the lawyer was retained by the defendant's family. Regarding the author, the State party submits that his rights throughout the pretrial investigation and trial were fully ensured by a lawyer, Ms. O.⁵ During the trial, the lawyer did not submit any complaints with regard to violations of the author's rights. The results of the trial were openly and widely disseminated in mass media, so the author was informed about the details of the case in a timely fashion. The author appealed the decision of the trial court to the Jalal-Abad Regional Court, but the appeal was denied on 31 January 2012.

4.7 The State party rejects the author's claim that he was discriminated against as a result of his Uzbek ethnicity. It notes that, as a result of the events of May and June 2010, criminal charges were filed against 139 persons, of which 46 per cent were of Kyrgyz ethnicity, 51 per cent of Uzbek ethnicity and 3 per cent of other ethnicities.

4.8 With regard to the author's claim that the State party has unlawfully confiscated his company, based on the trial court's sentence of 20 years' imprisonment and the confiscation of his property, which was upheld by the regional court, the State party submits that the sentence was enforced by State authorities in accordance with domestic law once the decision entered into force. The author's transfer of the majority stake in his company to Mr. Koshbayev was appealed by the prosecutor's office through local courts. On 15 April 2014, the company and all of its assets were transferred to the State property management fund. This transfer was not appealed by the author; therefore, available domestic remedies have not been exhausted.

⁵ Although not stated explicitly, the State party's submission seems to suggest that this lawyer was appointed ex officio and it is not clear if this lawyer ever contacted the author or his relatives.

4.9 Finally, the legislation of Kyrgyzstan allows for the reopening of criminal cases on the basis of new evidence. The State party considers that since the author has not petitioned the courts to reopen his case on the basis of new evidence, he has not exhausted all available domestic remedies.

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

5.1 On 14 September 2015, the author submitted his comments to the State party's observations. He rejects the State party's allegations that his television station repeatedly broadcast footage of the rally of 15 May 2010 and reiterates that it was aired only once on 16 May 2010. He also rejects that the rally was held in Uzbek and attended only by ethnic Uzbeks. He submits that during the rally, the governor of the Jalal-Abad region, who is of Kyrgyz ethnicity, gave a speech in Kyrgyz. He notes that by broadcasting the rally on 16 May 2010, his television station, as any other mass media outlet, only tried to deliver information to viewers about events that were taking place in the country at that time. He submits that, in the case of a disagreement with the way his station was conducting business, instead of prosecuting the author, the Government should have taken action in accordance with the law on mass media.

5.2 The author further rejects the State party's claim that he has not exhausted all available domestic remedies. He notes that he appealed his criminal conviction to the Supreme Court of Kyrgyzstan and that its decision cannot be further appealed. After the decision was issued, the author maintains that his television station was seized by the mayor of Osh and also maintains that he and his family received threats. He submits that the State party initiated his criminal prosecution because it wanted to nationalize Osh TV since it was a powerful media tool and an independent source of information for the local population. The author notes that since 1999, there had been several attempts by the State authorities to shut down his television station.⁶

State party's additional observations

6.1 In a note verbale dated 31 March 2017, the State party provided further observations. The State party submits that between 2000 and 13 June 2010, the author, together with a group of other individuals, actively organized anti-constitutional events directed at inciting: ethnic hatred; propaganda of superiority and exclusivity of the Uzbek people; the humiliation of dignity of another ethnicity; mass riots; and the violation of the territorial integrity of Kyrgyzstan by separation of its southern territories. To achieve these goals, they actively used mass media outlets financed by Mr. K. Batyrov. For example, on 15 March 2010, the newspaper of the Uzbek diaspora in Kyrgyzstan (named "Diydor") published an article by its chief editor, entitled "Is it difficult to be an Uzbek?". The article was used to promote ideas of inciting inter-ethnic hatred between Uzbek and Kyrgyz peoples. Moreover, during April and May 2010, Mr. Batyrov and his accomplices regularly gathered persons of Uzbek ethnicity at the People's Friendship University in Jalal-Abad, where he armed them with automatic weapons and held unlawful meetings and rallies.

6.2 The State party further submits that, between 12 and 16 May 2010, Mr. K. Batyrov and his accomplices organized unlawful rallies in Jalal-Abad and Osh regions, where he publicly called for the incitement of inter-ethnic hatred, mass riots, separatism and anarchy. All of those events were recorded on a video camera by Mr. Batyrov's personal video operator Mr. E. The State party notes that in order to ensure wide dissemination of the information about the rallies, their video recordings were repeatedly shown on two television channels – Osh TV and Mezon TV – which triggered counter protests by the Kyrgyz population of the Jalal-Abad region. The State party further reiterates its description of the events between 17 May and 13 June 2010, as contained in its previous submission.

6.3 The State party notes that the author fled Kyrgyzstan after the events of June 2010. On 19 July 2010, he was declared wanted by the police of Jalal-Abad region. Since article 259, paragraph 2, of the Criminal Procedure Code of Kyrgyzstan allows for a person to be tried in absentia if this person avoids appearing in court and is not on the territory of

⁶ The author submits copies of several court decisions and letters from various State authorities.

Kyrgyzstan, the criminal case against the author and his co-defendants was tried in their absence. However, the author was represented by a public defender, Mr. G., who later appealed the verdict of the trial court on the author's behalf. The State party denies that there has been any kind of intimidation of the author's lawyer or other participants in the trial.

6.4 The State party considers the report of the International Independent Commission for Inquiry into the events in the south of Kyrgyzstan in June 2010 to be biased in depicting those involved on the Uzbek side of the conflict as victims. According to the State party, the criminal cases showed that groups of the Uzbek population had not had to defend themselves. On the contrary, they had acted as aggressors during the conflict. Furthermore, on 26 May 2011, the Zhogorku Kenesh (parliament) of Kyrgyzstan decided that the report of the Commission should not carry any legal force because it was viewed as one-sided and lacking objectivity, thus triggering inter-ethnic hatred and posing a threat to the national security of Kyrgyzstan.

6.5 The State party reiterates that, since the legislation of Kyrgyzstan allows for the reopening of criminal cases on the basis of new evidence, and the author has not petitioned the courts to do so, his communication to the Committee should be considered inadmissible owing to the non-exhaustion of all available domestic remedies.

Additional observations

From the author

7. On 2 June 2017, the author reiterated that he had exhausted all available domestic remedies because the decision of 13 May 2014 of the Supreme Court of Kyrgyzstan was final and could not be appealed. On the same date, the author submitted the copy of a letter from the Ministry of Internal Affairs of the Russian Federation informing him that there was an international warrant for his arrest and return to Kyrgyzstan. The author alleges that he is probably wanted in all countries in the Commonwealth of Independent States since they are all signatories to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters.⁷ The author submits that he is going to be arrested if he visits any of these countries and requests that the examination of his communication be expedited.

From the State party

8. On 10 January 2018, the State party reiterated its observations from 31 March 2017.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 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.

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.

9.3 The Committee notes the State party's claim that the author failed to exhaust all available domestic remedies as he has not petitioned the courts to reopen his case on the basis of new evidence. At the same time, the Committee notes the State party's submission dated 15 July 2015, in which it confirmed that the author had exhausted all available domestic remedies. The Committee notes that the author also claims that he has exhausted all available domestic remedies because the decision of 13 May 2014 of the Supreme Court

⁷ The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters was signed in Minsk in 1993 and is in force in and among the following States: Armenia, Belarus, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. The Convention provides the rules for legal cooperation between member States' courts in civil, family and criminal matters.

of Kyrgyzstan was final and could not be appealed further. It is unclear from the State party's submissions what new evidence the author could have used as a basis to petition the courts to reopen the case. In the absence of other objections from the State party regarding the exhaustion of domestic remedies by the author, the Committee considers that it is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol from examining the present communication.

9.4 Recalling its jurisprudence according to which the provisions of article 2 lay down general obligations for States parties and cannot, by themselves, give rise to a separate claim under the Optional Protocol as they can be invoked only in conjunction with other substantive articles of the Covenant,⁸ the Committee considers the author's claims under article 2 (1) are inadmissible under article 3 of the Optional Protocol.

9.5 The Committee notes the author's claim that he was not notified about his trial and was sentenced in absentia, which violated his rights to be tried in his presence and examine witnesses against him as provided for in articles 14 (3) (d) and (e) of the Covenant. The Committee recalls that under article 14 (3), everyone is entitled to be tried in his or her presence and to defend himself or herself in person or through legal assistance. This provision and other requirements of due process enshrined in article 14 cannot be construed as invariably rendering proceedings in absentia impermissible, irrespective of the reasons for the accused person's absence.⁹ Indeed, proceedings in absentia may in some circumstances be permissible in the interest of the proper administration of justice: for example, when the accused person, although informed of the proceedings sufficiently in advance, declines to exercise his or her right to be present. The Committee has held in the past that a trial in absentia is compatible with article 14, only when the accused has been summoned in a timely manner and informed of the proceedings against him or her.¹⁰ In order for the State party to comply with the requirements of a fair trial when trying a person in absentia, it must show that these principles were respected.¹¹

9.6 The Committee acknowledges, however, that there must be certain limits to the efforts that can reasonably be expected of the competent authorities with a view to establishing contact with the accused.¹² The State party has not denied that the author was tried in absentia on the basis of domestic law that allows for in absentia trials if defendants are outside of Kyrgyzstan and avoid appearing in court. The Committee notes the author's submission that he left Kyrgyzstan with his family for the Russian Federation in July 2010; that he left the Russian Federation for the United States in November 2010; and that he was not informed about the trial and learned of the verdict only through mass media. In these circumstances, when the author moved to two different countries and had no family in Kyrgyzstan who could have been notified about the criminal proceedings against him, the Committee considers it would be unreasonable to require the State party to establish contact with the author after seeking out his prior known residences and finding he had left the country. These factors, taken together, lead the Committee to conclude that, under these specific circumstances, the author has failed to provide sufficient substantiation of his claim of violations of articles 14 (3) (d) and (e) of the Covenant and that these claims are therefore inadmissible under article 2 of the Optional Protocol.

9.7 The Committee further notes the author's claim that the State party violated his rights under article 17 (1) because his house and business had been unlawfully confiscated by the State party. The Committee observes, however, that according to the information available, these claims do not appear to have been raised in the domestic proceedings. This part of the communication, raising issues under article 17 (1) of the Covenant, is

⁸ See, e.g., *H.E.A.K. v. Denmark* (CCPR/C/114/D/2343/2014), para. 7.4; *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.4; *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4; and *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5.

⁹ *Mbenge v. Zaire* (CCPR/C/18/D/16/1977), para. 14.1.

¹⁰ *Ibid.*

¹¹ *Maleki v. Italy* (CCPR/C/66/D/699/1996/Corr.1), para. 9.3.

¹² *Salikh v. Uzbekistan* (CCPR/C/95/D/1382/2005), para. 9.5.

accordingly declared inadmissible for failure to exhaust all domestic remedies in accordance with article 5 (2) (b) of the Optional Protocol.

9.8 With regard to the author's claim of a violation under article 27 of the Covenant, the Committee notes that the author has failed to provide sufficient information to enable the Committee to consider that the facts of the communication raise issues under this article of the Covenant. Accordingly, the Committee considers the author's claim concerning this part of the communication is not substantiated and is inadmissible under article 2 of the Optional Protocol.

9.9 The Committee considers that the author has sufficiently substantiated his remaining claims, under articles 14 (1) and (2) of the Covenant, for the purposes of admissibility. Accordingly, it declares the communication admissible in this respect 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 submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

10.2 The Committee notes the author's claim that the resolution passed by the parliament of Kyrgyzstan on 16 June 2011 denied him any prospects of a fair trial and the presumption of innocence because it influenced the outcome of the trial, which violated his rights under article 14 (2), and consequently violated his right under article 14 (1) to be judged by a fair and impartial tribunal. The Committee also notes the State party's argument that the legislative branch of the Government has the power to discuss the results of the work of its fact-finding commissions and that discussions in the parliament should never be interpreted as interference in the independent work of the judicial branch because final decisions are always taken by the courts. The Committee recalls its jurisprudence¹³ as reflected in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, according to which the presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt and requires that persons accused of a criminal act must be treated in accordance with this principle. The Committee observes that while the text of the parliamentary resolution describes the author and his co-defendants as organizers and perpetrators of the tragic events in Osh and Jalal-Abad of May and June 2010, it also recommends that the Supreme Court of Kyrgyzstan ensure full transparency in criminal proceedings against persons accused of committing crimes in connection with the events in question and that relatives of defendants and representatives of international organizations are allowed access to the courtroom during the trial. The Committee, however, notes that the author has not provided any information indicating how the resolution – a political document – could have affected the criminal proceedings in his case. The Committee concludes that the facts as presented to it by the author do not allow it to find a violation of his rights under article 14 (2). Consequently, the Committee also finds no violation of his right under article 14 (1) of the Covenant.

11. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it would not be a violation by the State party of articles 14 (1) and (2) of the Covenant.

¹³ *Kovalev et al. v. Belarus* (CCPR/C/106/D/2120/2011), para. 11.4; *Mwamba v. Zambia* (CCPR/C/98/D/1520/2006), para. 6.5.

Annex

Individual opinion of Committee member Shuichi Furuya (dissenting)

1. I am unable to concur with the Committee's conclusion that (a) the author's claim of violation of article 14 (3) (d) concerning a trial in absentia is inadmissible and (b) the resolution of the parliament does not constitute a violation of article 14 (2).

1. Trial in absentia

2. Pursuant to article 14 (3) (d) of the Covenant, everyone is entitled to be tried in his or her presence and to defend himself or herself in person or through legal assistance. On the other hand, as the majority of the Committee points out, criminal proceedings in the absence of the accused may in some circumstances be permissible in the interest of the proper administration of justice – e.g., when accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present.¹ However, it is important to note that a trial with the presence of the accused is a principle, while a trial in absentia is an exception.

3. Therefore, the Committee has emphasized that a trial in absentia is compatible with article 14, only when the accused is summoned in a timely manner and informed of the proceedings against him or her.² This is because the effective exercise of the rights under article 14 presupposes that the necessary steps should be taken to inform the accused beforehand about the proceedings against him or her (art. 14 (3) (a)). A trial in absentia thus requires that, notwithstanding the absence of the accused, all due notification has been made to inform him or her of the date and place of the trial and to request the attendance of the accused. Otherwise, the accused is not given adequate time and facilities for the preparation of his or her defence (art. 14 (3) (b)) and cannot defend himself or herself through legal assistance of his or her own choosing (art. 14 (3) (d)). Nor does the accused have the opportunity to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf (art. 14 (3) (e)).³

4. Since a trial in absentia is the exception to article 14 (3) (d), it is incumbent on a State party to demonstrate whether it has taken the necessary steps to notify the accused of the information of proceedings. The Committee has acknowledged that there must be certain limits to the efforts that can reasonably be expected of the competent authorities with regard to establishing contact with the accused.⁴ Even if there are certain difficulties involved in contacting the accused, however, the State party is still obliged to demonstrate that it has actually made the utmost effort to inform an accused person of the charges against him or her and to notify him or her of the proceedings.

5. In the present case, however, the author alleged that the State party had not taken any measures to contact him before the criminal proceedings commenced, and the State party did not rebut that allegation. In fact, the State party has provided no information to the Committee with regard to the steps it took to inform the author of the charges against him or notify him of the court proceedings.

6. Under these circumstances, I have to conclude that the author's claim is admissible and the trial that the State party commenced without the presence of the author constitutes a violation of his rights under article 14 (3) (d).

¹ General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 36.

² *Ibid.*; *Maleki v. Italy* (CCPR/C/66/D/699/1996/Corr.1), para. 9.3; *Kostin v. Russian Federation* (CCPR/C/119/D/2496/2014), para. 7.2.

³ *Mbenge v. Zaire* (CCPR/C/18/D/16/1977), para. 14.1; *Osiyuk v. Belarus* (CCPR/C/96/D/1311/2004), para. 8.2.

⁴ *Mbenge v. Zaire*, para. 14.2; *Osiyuk v. Belarus*, para. 8.3.

2. Resolution of the parliament

7. According to general comment No. 32 of the Committee, the presumption of innocence under article 14 (2) requires that a person accused of a criminal act must be treated in accordance with this principle. In this respect, the obligation deriving from the presumption of innocence goes beyond the conduct of the judge and the prosecutor during the criminal proceedings. In a broader social context, the suspect and accused is to be presumed innocent until he or she is found guilty by a competent court. For this purpose, it is noted in paragraph 30 of the general comment that all public authorities have a duty to abstain from making public statements affirming the guilt of the accused and the media should avoid news coverage undermining the presumption of innocence.

8. In my view, therefore, in order to find a violation of the presumption of innocence, it does not matter whether, for instance, statements by public authorities or news coverage by the media could actually affect the outcome of criminal proceedings. Treatment suggesting the guilt of a suspect or accused in and of itself may constitute a violation of the presumption of innocence.

9. The majority of the Committee finds that the author has not provided any information indicating how the resolution – a political document – could have affected the criminal proceedings in his case, and then concludes that there was no violation of his right under article 14 (2). However, a crucial matter in the present case is not whether the resolution affected the author's criminal proceedings, but whether it really suggested his guilt. In this regard, it is to be noted that paragraph 7 of the resolution explicitly mentions the author by name as one of the perpetrators of the events with which he was criminally charged. Even if the parliament has the power to discuss the result of the work of its fact-finding commissions, it has an obligation as an organ of the State party to treat a person in accordance with the principle of the presumption of innocence.

10. I have to conclude, therefore, that the adoption of the resolution by the parliament, suggesting the guilt of the author before a competent court so decided, constitutes a violation of his right under article 14 (2).
