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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. 2723/2016**, ***

Communication submitted by:	Kuluypa Tashtanova, mother of the alleged victim (represented by counsel, Utkir Djabbarov)
Alleged victim:	Belek Kurmanbekov
State party:	Kyrgyzstan
Date of communication:	11 January 2016 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 5 February 2016 (not issued in document form)
Date of adoption of Views:	14 March 2023
Subject matter:	Torture by law enforcement officers in order to obtain confession; use of forced confession in court
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Prohibition of torture; right to an effective remedy; arbitrary arrest and detention; forced confession
Articles of the Covenant:	2 (3), 7, 9 (1), (3) and (4), 10 (1) and (2) and 14 (3) (g)
Article of the Optional Protocol:	5 (2) (b)

1. The author of the communication is Kuluypa Tashtanova, a national of Kyrgyzstan born in 1966. She submits the complaint on behalf of her son, Belek Kurmanbekov, born in 1993, who was serving a prison sentence at the time of submission. She claims that the State party has violated her son's rights under article 7, read alone and in conjunction with article 2 (3), and articles 9 (1), (3) and (4), 10 (1) and (2) and 14 (3) (g) of the Covenant. The Optional

* Reissued for technical reasons on 5 June 2023.

** Adopted by the Committee at its 137th session (27 February–24 March 2023).

*** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

Protocol entered into force for Kyrgyzstan on 7 January 1995. The author is represented by counsel.

Facts as submitted by the author

2.1 On 21 July 2012, at approximately 9.30 p.m., a group of 10–15 armed men (some of them wearing balaclavas) stormed Mr. Kurmanbekov's flat in Jalalabad. The men twisted Mr. Kurmanbekov's hands behind his back and started punching him in the face and abdomen when he showed the slightest resistance. Not knowing that the armed men were police officers, the author, her sister and Mr. Kurmanbekov's wife, who were present in the flat at that time, tried to stop his being taken away and were themselves punched by the men.

2.2 Mr. Kurmanbekov was first taken in a police car to the Jalalabad provincial police station where he was placed with his face down on the floor in one of the rooms and kicked on his sides and in the kidneys. He was then taken to the Aksy district police station in Kerben City, 280 km away from Jalalabad. On the way, he was beaten by police officers on his head and kicked in the abdomen. They tried to force him to confess to having committed a murder and stealing 15 head of cattle. Police officers then placed a plastic bag over his head and stopped torturing him only when he started losing consciousness.

2.3 In the Aksy district police station, he saw his wife in tears in one of the rooms. He was not allowed to talk to her. He was then taken by police officers to a room on the second floor, where he was punched in the kidneys and the abdomen and beaten up by the officers.

2.4 In the meantime, Mr. Kurmanbekov's wife was threatened by two police officers with having her hair shaved off and being put in prison and raped if she refused to testify that her husband had committed a murder. Mr. Kurmanbekov was tortured in front of her by having a bag placed over his head; she was threatened with being treated in the same way. Eventually, she wrote down what was dictated to her by one of the police officers to implicate her husband.

2.5 On the morning of 22 July 2012, Mr. Kurmanbekov was still being kept in the same room at the Aksy district police station. At some point, an ex officio lawyer, K., was invited into the room by the investigator. When Mr. Kurmanbekov started telling him about the beatings and torture, the lawyer started kicking him and tried to convince him to sign the confession. Mr. Kurmanbekov tried unsuccessfully to refuse the lawyer's services. He was forced to sign a confession when police officers threatened to charge his wife with murder and to torture her instead of him. They promised to release his wife if he confessed.

2.6 Between 10 a.m. and 12.50 p.m. on 22 July 2012, police officers drew up a report on the reconstruction of the crime scene with Mr. Kurmanbekov's participation and in the presence of the ex officio lawyer. Mr. Kurmanbekov's detention was registered at 4 p.m. on 22 July 2012, that is 18 hours after his actual detention, during which he was subjected to torture. Later that day, when Mr. Kurmanbekov was placed in the temporary detention facility of Kerben City, a police officer interrogated him without a lawyer being present. Mr. Kurmanbekov then refused to sign the notification of murder charges against him.

2.7 On 24 July 2012, the Aksy District Court approved Mr. Kurmanbekov's pretrial detention. The author argues that this decision was taken by a judge without due consideration of whether there were reasonable grounds for her son's detention. Mr. Kurmanbekov's detention was extended by the same judge of the Aksy District Court on 21 September 2012, when the judge decided that the case was procedurally ready to be examined by the Court.[1]

2.8 On 24 July 2012, a lawyer hired by the author requested that the Aksy district prosecutor and the head of the Aksy district police station conduct a forensic medical examination of Mr. Kurmanbekov. On 25 July 2012, in report No. 115, a forensic medical expert confirmed that Mr. Kurmanbekov had suffered minor bodily injuries. On 3 August 2012, Mr. Kurmanbekov filed a complaint against police officers for torture, listing the names of those who had tortured him. He also referred to the poor conditions in the temporary

[1] The author submits that, according to article 339 (2) of the Criminal Procedure Code, a ruling on the type of preventive measure cannot be appealed if it is made by a judge presiding over the criminal proceedings of the case.

detention facility, including lack of food and water, the inability to receive parcels from his family, the lack of bed linen and mattresses and that he had to sleep on a concrete floor.[2] On 6 August 2012, at the request of the prosecutor's office, the same forensic medical expert concluded, in report No. 123 dated 8 August 2012, that no signs of beatings could be detected on Mr. Kurmanbekov's body.[3] On 9 August 2012, Dr. K. from Justice, a human rights organization, examined Mr. Kurmanbekov in accordance with the standards contained in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). Her report of 10 August 2012 indicated that there were no visible traces of torture on his body. She noted, however, that he had a painful sensation in the left iliac region, the epigastric region and in the area surrounding the kidneys. Such injuries indicated damage to the abdominal soft tissue, which could have been caused by beatings.

2.9 According to the author, on 8 August 2012, the Aksy district prosecutor's office refused to institute criminal proceedings on account of torture, referring to the fact that the forensic report dated 8 August 2012 did not indicate any injuries on Mr. Kurmanbekov's body.

2.10 On 4 October 2012, the trial of Mr. Kurmanbekov started in the Aksy District Court. He requested re-examination of the lawfulness of his detention pending trial and asked for the exclusion of evidence that had been obtained under torture. The first request was rejected by the Court without explanation. The second request was rejected based on the decision of the prosecutor's office according to which there had been no evidence of ill-treatment. A complaint in the Court on the same matter was interpreted by the Court as an attempt to avoid criminal liability. On 6 November 2012, the Aksy District Court found Mr. Kurmanbekov guilty of having committed a murder with special cruelty, as proscribed by article 97 (2) of the Criminal Code of Kyrgyzstan, and sentenced him to 20 years of imprisonment, to be served in a prison with a strict regime. In its findings, the Aksy District Court relied on Mr. Kurmanbekov's confession obtained under torture. On 13 November 2012, Mr. Kurmanbekov appealed the judgment of the Aksy District Court to the Jalalabad Provincial Court. In his appeal, he requested, inter alia, re-examination of the lawfulness of his pretrial detention and the exclusion of evidence against him that had been obtained under torture. On 12 July 2013, the Jalalabad Provincial Court reclassified the crime allegedly committed by Mr. Kurmanbekov as a murder under article 97 (1) of the Criminal Code, having removed the element of "special cruelty", and resentenced him to 12 years of imprisonment in a prison with a strict regime. The rest of the judgment of the Aksy District Court remained unchanged. On an unspecified date, Mr. Kurmanbekov appealed the judgment of the Jalalabad Provincial Court to the Supreme Court of Kyrgyzstan under the supervisory review procedure. This appeal was rejected by the Supreme Court on 27 October 2014.

2.11 On 1 November 2012, the author filed a complaint against the decision of the Aksy district prosecutor's office of 8 August 2012 not to open a criminal investigation into the allegations of her son's torture. She claimed, inter alia, that her son had been unlawfully detained in the temporary detention facility for two days during which he had been subjected to severe beatings. On 9 November 2012, the Aksy District Court rejected the author's complaint. On an unspecified date, the author appealed this decision to the Jalalabad Provincial Court. On 11 December 2012, the Jalalabad Provincial Court concluded that Mr. Kurmanbekov had been effectively detained on 21 July 2012 and that his detention was contrary to article 95 of the Criminal Procedure Code and thus unlawful.[4] It also concluded

[2] The author submits that he was held together with persons who had previous criminal convictions. The size of his personal space in the cell was less than the minimum of 3.25 m^2 as established in law; there was a bucket instead of a toilet in the cell; and there was no water in the temporary detention facility (detainees had to request the prison administration to provide water to wash themselves).

[3] The author submits that such a discrepancy between the first and second expert reports is explained by the fact that the second examination was conducted 13 days later.

[4] Article 95 (procedure for detaining a person suspected of having committed a crime) states that, no later than three hours after the arrival of the detainee, a record of the detention proceedings should be drawn up. The record should contain the grounds, place and time of the detention and the results of the personal search. The records should be read to suspects, together with an explanation of their

that the initial decision had failed to consider the forensic medical report of Dr. K., in which she indicated that Mr. Kurmanbekov had minor injuries to soft abdominal tissue, which could have been caused by blows to the body. The Court noted that the prosecutor had not questioned any witnesses in the case: Mr. T., Mr. Kurmanbekov's wife, his aunt and his mother. The decision of the Aksy district prosecutor's office of 8 August 2012, refusing to institute criminal proceedings in relation to torture, was found to be unlawful. The Court referred the case to the Jalalabad provincial prosecutor's office for the adoption of a lawful decision.

2.12 On 19 December 2012, the Jalalabad provincial prosecutor's office appealed the ruling of the Jalalabad Provincial Court to the Supreme Court under the supervisory review procedure. On 9 April 2013, the Supreme Court upheld the appeal submitted by the prosecutor's office and reinstated the ruling of the Aksy District Court of 9 November 2012.

2.13 The Aksy district prosecutor's office, nevertheless, carried out an additional preliminary examination and, on 18 January 2013, again refused to institute criminal proceedings against police officers for having subjected Mr. Kurmanbekov to torture. On 12 September 2013, the author appealed this decision to the Aksy District Court with a request for the entire panel of judges of the Aksy District Court to be recused from examining her son's case. On 25 September 2013, the author's request was granted and Mr. Kurmanbekov's case file was transmitted to the Maili-Say City Court.

2.14 On 12 December 2013, the Maili-Say City Court rejected the author's appeal and upheld the ruling of the Aksy district prosecutor's office of 18 January 2013. The Court concluded that neither the forensic medical report nor the report of Dr. K. (of 10 August 2012) revealed any physical injuries inflicted on the author's son. On 13 January 2014, the author appealed this decision to the Jalalabad Provincial Court. On 18 February 2014, the Jalalabad Provincial Court rejected her appeal and upheld the ruling of the Maili-Say City Court.

2.15 On 20 March 2014, the author appealed the ruling of the Jalalabad Provincial Court to the Supreme Court under the supervisory review procedure. This appeal was rejected by the Supreme Court on 12 May 2014. The Supreme Court's ruling in relation to the refusal to institute proceedings against police officers on account of their having subjected Mr. Kurmanbekov to torture is final and cannot be appealed.

Complaint

3.1 The author claims that her son was subjected to torture by police officers with the aim of obtaining a confession, in violation of article 7 of the Covenant. She claims that the State party failed to open and carry out an effective investigation into her son's allegations of torture, in violation of article 2 (3), read in conjunction with article 7, of the Covenant.

3.2 The author claims that her son was detained without a valid reason, that his detention was not based on law,[5] that he was not brought before the judge promptly[6] and that his appeal was not considered by the court in order to determine the lawfulness of his detention.[7] She

rights, as provided for under article 40 of the Criminal Procedure Code. The record should be signed by the person who has written it and by the detainee. The investigator is obliged to inform the prosecutor in writing about the detention within 12 hours after the record has been written up. The detainee should be questioned in accordance with the rules provided for under article 191 of the Criminal Procedure Code.

[5] The author claims that the authorities had no grounds to detain her son and that the allegations of murder were fabricated after his detention. She alleges that the legal provisions were interpreted broadly, which is not permitted. She refers to article 94 of the Criminal Procedure Code, which sets out an exhaustive list of grounds for detaining a suspect: (a) if the person is caught during the commission of the crime or immediately thereafter; (b) if eyewitnesses identify the person as someone who committed the crime; or (c) if obvious traces of the crime are detected on the suspect's clothes, on the suspect or at the place of residence of the suspect.

[6] The author claims that her son, from the moment of his detention until the moment of his being brought before the judge, spent 66 hours in detention, instead of the 48 hours allowed under the law (article 39 (2) of the Criminal Procedure Code).

[7] The author submits that the law does not establish the maximum duration of pretrial detention and that judges order detention "for the duration of trial proceedings", "until the case is decided" or "until

therefore claims that article 9 (1), (3) and (4) of the Covenant has been violated by the State party.

3.3 The author alleges that article 10 (1) and (2) of the Covenant has been violated by the State party due to her son's poor conditions of detention in the temporary detention facility.

3.4 The author also claims that the State party violated article 14 (3) (g) of the Covenant when the courts relied on his forced confession to find him guilty.

State party's observations on admissibility and the merits

4.1 On 11 August 2016, the State party submitted its observations on the admissibility and the merits of the communication. The State party states that, on 21 July 2012, a criminal investigation was opened into the murder of Mr. U. On 22 July 2012, Mr. Kurmanbekov was detained as a suspect in that case. He was charged with the murder of Mr. U. The Aksy District Court found the detention to be lawful and ordered Mr. Kurmanbekov's pretrial detention. The State party refers to the domestic proceedings in Mr. Kurmanbekov's criminal case and submits that the courts did not rely exclusively on his confession obtained during the investigation and court hearings. His guilt was also proven by the statements of the victim's representative, Ms. U., by witnesses, Ms. T., Ms. A., Mr. T. and Ms. R., and a minor, M., as well as statements by the Aksy district police officers and the results of forensic medical, biological and technical reports.

4.2 The State party submits that, on 3 August 2012, Mr. Kurmanbekov's lawyer filed a complaint with the Aksy district prosecutor's office alleging that Mr. Kurmanbekov had been tortured to make him confess to the murder of Mr. U. After a preliminary examination, on 8 August 2012, the Aksy district deputy prosecutor refused to open a criminal investigation into the actions of the police officers of the Aksy district police station, in accordance with article 28 (1) (2) of the Criminal Procedure Code, that is due to the lack of corpus delicti. The State party lists the steps taken by the author to appeal the decision of the prosecutor's office (paras. 2.11–2.15 above).

4.3 The State party informs the Committee that the author has the possibility of reopening legal proceedings on the basis of new or newly discovered evidence in accordance with articles 384 and 387 of the Criminal Procedure Code. Mr. Kurmanbekov has not submitted such a request to the prosecutor's office and, therefore, has not exhausted all domestic remedies. The State party concludes that the communication should be found inadmissible under article 5 (2) (b) of the Optional Protocol.

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

5.1 On 16 November 2016, the author responded to the State party's observations, claiming that the State party had not addressed the substance of her allegations. The State party mentioned that the complaint alleging torture of her son was filed with the Aksy district prosecutor's office on 3 August 2012, but did not mention that the first complaint had been filed on 24 July 2012. As a result of the first complaint, a forensic medical examination of Mr. Kurmanbekov was carried out on 25 July 2012. Because the first complaint remained unanswered by the prosecutor's office, a second complaint was submitted on 3 August 2012.

5.2 The author claims that the State party refers to the procedure that she relied upon to contest the decision not to open an investigation into the alleged torture of her son. She notes that the State party, however, does not deny the facts as submitted by her concerning her son's torture.

5.3 As regards the State party's reference to articles 384 and 387 of the Criminal Procedure Code, the author explains that it is insufficient to simply request the reopening of legal proceedings on the basis of new or newly discovered evidence. There must be valid grounds for proceedings to be reopened.

the court ruling enters into force". These formulations allow detention in inhuman conditions for years.

5.4 The State party does not address the author's allegations concerning the inadequate conditions of detention of her son. She refers to visit reports by the National Centre for the Prevention of Torture in 2013–2015, which confirm the poor conditions, including in the temporary detention facility in which her son was held.[8]

Additional submissions

From the State party

6. On 13 March 2017, the State party submitted additional observations maintaining its position that the author had failed to exhaust all domestic remedies. The State party submits that the author's claim that the first complaint of her son's torture was filed with the district prosecutor's office on 24 July 2012 is erroneous. According to the case file, on 24 July 2012, Mr. Kurmanbekov's lawyer requested the Aksy district police station to organize a forensic medical examination of the author's son. Such an examination was carried out on 25 July 2012. The author's claim that it is impossible to verify allegations of torture without opening a criminal investigation is groundless. According to article 150 of the Criminal Procedure Code, a criminal investigation is opened if there is sufficient evidence of the fact that a crime has been committed. In the present case, there is no such evidence in Mr. Kurmanbekov's criminal file, besides his own allegations. Regarding the reopening of legal proceedings on the basis of new or newly discovered evidence, the State party clarifies that it relates to the author's claims that some evidence had not been examined in relation to her son's allegations of torture. Thus, the author has failed to exhaust domestic remedies.

From the author

7.1 On 23 June 2017, the author provided comments on the State party's additional observations. She reaffirms that all available domestic remedies have been exhausted in relation to her son's allegations of torture, of which there is a detailed description in her initial submission. The author submits that the forensic medical examination of 25 July 2012 indicated that her son had injuries, which was sufficient grounds for opening a criminal investigation under article 150 of the Criminal Procedure Code. The author reiterates that a preliminary examination cannot provide a full and adequate response to allegations of torture.

7.2 Following the State party's observations concerning the failure to exhaust domestic remedies, the author submitted requests to reopen legal proceedings on the basis of newly discovered circumstances to the Supreme Court and to the Office of the Prosecutor General on 15 May 2017. On 2 June 2017, the Supreme Court rejected the author's request having found no new circumstances in her submission. Similarly, on 5 June 2017, the Aksy district prosecutor's office rejected the author's request.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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.

8.2 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.

8.3 The Committee takes note of the State party's claim that the author has not exhausted all available effective domestic remedies because her son has not requested the reopening of legal proceedings in relation to an investigation of his allegations of torture on the basis of new or newly discovered evidence. In this regard, the Committee recalls that, for the purposes of article 5 (2) (b) of the Optional Protocol, domestic remedies must be both effective and available, and must not be unduly prolonged.[9] The Committee also notes the author's claims

[8] See http://npm.kg/ru/ezhegodnye-doklady-ntspp-kr (in Russian).

[9] See, for example, *Katwal v. Nepal* (CCPR/C/113/D/2000/2010), para. 6.3.

that she indeed submitted requests to reopen legal proceedings on the basis of newly discovered circumstances to the Supreme Court and to the Office of the Prosecutor General on 15 May 2017 (para. 7.2 above). From the decisions of the Supreme Court dated 2 June 2017 and the Aksy district prosecutor's office dated 5 June 2017, the Committee, however, notes that the procedure in question involves the discretion of the relevant court or prosecutor in deciding whether the claims of the appellant indeed constitute new or newly discovered evidence. The Committee therefore does not consider such a remedy effective for the purpose of admissibility under article 5 (2) (b) of the Optional Protocol.[10] In the absence of additional objections concerning exhaustion of domestic remedies by the author, the Committee finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

8.4 In the Committee's view, the author's claims under article 7, read alone and in conjunction with article 2 (3), and articles 9 (1), (3) and (4), 10 (1) and (2) and 14 (3) (g) of the Covenant have been sufficiently substantiated for the purposes of admissibility. Accordingly, it declares those parts of the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

9.2 The Committee notes the author's allegation that the State party violated her son's rights under article 7 of the Covenant when he was ill-treated by the police officers on 21 July 2012, in an attempt to obtain his forced confession to a murder. In that regard, the Committee notes that the author provides a detailed account of the ill-treatment to which her son was subjected. She herself witnessed her son's beatings during his apprehension by police officers in their apartment (para. 2.1 above). Her son's wife saw how he was ill-treated during his detention in the police station (para. 2.4 above). The author provides a copy of forensic medical report No. 115, dated 25 July 2012, which confirms that Mr. Kurmanbekov had suffered minor injuries. She also provides the report of Dr. K., of 10 August 2012, which indicates that Mr. Kurmanbekov had a painful sensation in the left iliac region, epigastric region and in the areas surrounding the kidneys, indicating damage to the abdominal soft tissue area, possibly caused by beatings (para. 2.8 above).

9.3 The Committee recalls that a State party is responsible for the security of any person it holds in detention and that, when an individual in detention shows signs of injury, it is incumbent upon the State party to produce evidence showing that it is not responsible for such an injury.[11] The Committee has held on several occasions that the burden of proof in such cases cannot rest with the author of a communication alone, especially considering that frequently only the State party has access to the relevant information.[12] In the absence of any plausible evidence from the State party to counter the claims made by the author concerning her son's torture by police officers and the evidence she produced in support of the claims, the Committee decides that due weight must be given to the author's detailed allegations of the cause of her son's injuries. The Committee therefore decides that the facts as submitted reveal a violation of Mr. Kurmanbekov's rights under article 7 of the Covenant.

9.4 Regarding the State party's obligation to properly investigate the author's claims of torture, the Committee recalls its jurisprudence according to which criminal investigation and consequential prosecution are necessary remedies for violations of human rights, such as those protected under article 7 of the Covenant.[13] The Committee also recalls that, once a

[10] See, for example, mutatis mutandis, *Shchiryakova v. Belarus* (CCPR/C/135/D/2848/2016), para. 6.3; and *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4.

[11] See, for example, *Eshonov v. Uzbekistan* (CCPR/C/99/D/1225/2003), para. 9.8; *Siragev v. Uzbekistan* (CCPR/C/85/D/907/2000), para. 6.2; and *Zheikov v. Russian Federation* (CCPR/C/86/D/889/1999), para. 7.2.

[12] See, for example, *Mukong v. Cameroon* (CCPR/C/51/D/458/1991), para. 9.2; and *Bleier v. Uruguay*, communication No. 30/1978, para. 13.3.

[13] See the Committee's general comment No. 20 (1992), para. 14; and general comment No. 31 (2004), para. 18.

complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially so as to make the remedy effective.[14]

9.5 In the present case, the Committee notes that a complaint about Mr. Kurmanbekov's torture and a request for a forensic medical examination were submitted on 24 July 2012 to the Aksy district police station. The forensic medical examination was carried out on 25 July 2012. On 5 August 2012, a complaint alleging Mr. Kurmanbekov's torture was filed with the Aksy district prosecutor's office. A preliminary examination was carried out without delay, including a new forensic medical examination and, on 8 August 2012, the prosecutor's office refused to open a criminal investigation because of the lack of corpus delicti.

9.6 The Committee observes that the Aksy district prosecutor's office, in its decision of 8 August 2012 not to open a criminal investigation into the allegations of torture of Mr. Kurmanbekov, referred to two forensic medical reports dated 25 July and 8 August 2012. According to that decision, neither of those reports contained information about Mr. Kurmanbekov's injuries. The Committee notes, however, that report No. 115 of 25 July 2012, provided by the author, indicates that Mr. Kurmanbekov had minor injuries (para. 2.8 above). The Committee notes that in its appeal decision of 11 December 2012, the Jalalabad Provincial Court specifically noted that report No. 115 had not been taken into consideration in the initial decision. The Committee observes that the findings of forensic medical report No. 115 were not taken into account by the Aksy district prosecutor's office. The Committee also notes the author's claim that the prosecutor did not question Mr. Kurmanbekov during the preliminary examination. According to the conclusion of the Jalalabad Provincial Court of 11 December 2012, other possible witnesses in the case, including Mr. Kurmanbekov's wife and mother, were not questioned either (para. 2.11 above). In the absence of information from the State party concerning details of the preliminary examination, the Committee finds that it was not carried out effectively and did not provide the author's son with an effective remedy. In the light of the above, the Committee concludes that the State party violated Mr. Kurmanbekov's rights under article 2 (3), read in conjunction with article 7, of the Covenant.

9.7 The Committee notes the author's claims that her son was apprehended by police officers in his flat on 21 July 2012 and that the police records state that the arrest had taken place on 22 July 2012. The Committee notes that there were several witnesses to the apprehension of Mr. Kurmanbekov on 21 July 2012. The Committee notes that neither the domestic courts nor the State party in its observations addressed the author's allegations of unlawful detention except the Jalalabad Provincial Court, which concluded, on 11 December 2012, that Mr. Kurmanbekov's detention was unlawful. This decision, however, was quashed by the Supreme Court on 9 April 2013. The Committee recalls its general comment No. 35 (2014), according to which arrest within the meaning of article 9 need not involve a formal arrest as defined under domestic law. The Committee notes that the State party has not provided any explanation of the circumstances of Mr. Kurmanbekov's apprehension on 21 July 2012, as witnessed by his family members, and his unrecorded detention between 21 and 22 July 2012.[15] The Committee considers that due weight must be given to the author's detailed allegations of unlawful and arbitrary detention of her son for 18 hours, from 21 to 22 July 2012. The Committee therefore concludes that Mr. Kurmanbekov has been detained unlawfully in violation of article 9 (1) of the Covenant. In the light of this finding, the Committee does not consider it necessary to examine the author's allegations of a violation of article 9 (3) and (4) of the Covenant.

9.8 The Committee notes the author's claims that the courts took into account her son's confession obtained by the police officers as a result of torture, in violation of article 14 (3) (g) of the Covenant. The Committee observes that, at Mr. Kurmanbekov's trial, despite his claims to the effect that his confession had been obtained under torture, the court referred to the decision of the Aksy district prosecutor's office of 8 August 2012, which did not confirm the author's claims of her son's torture. Mr. Kurmanbekov's claim of torture was found by the courts to constitute a defence strategy aimed at avoiding criminal liability. The Committee

[14] See the Committee's general comment No. 20 (1992), para. 14; and, for example, *Neporozhnev v. Russian Federation* (CCPR/C/116/D/1941/2010), para. 8.4.

[15] See, for example, *Askarov v. Kyrgyzstan* (CCPR/C/116/D/2231/2012), para. 8.4.

notes that documents submitted by the author indicate that the appeal courts and the supervisory instance courts did not address Mr. Kurmanbekov's claims of torture and continued to rely on his initial confession. The Committee notes the State party's submission that the courts did not rely exclusively on Mr. Kurmanbekov's confession and that his guilt was confirmed by witnesses and forensic medical, biological and technical reports. However, the Committee notes that, as long as the domestic courts took into account the forced confession in reaching a guilty verdict in his case, without a proper examination of his allegations of torture, there was a violation of article 14 (3) (g) of the Covenant.

9.9 Having concluded that, in the present case, there has been a violation of article 7, read alone and in conjunction with article 2 (3), of the Covenant, the Committee decides not to examine separately the author's claims under article 10.

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

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author's son 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 conduct a prompt and effective investigation into the torture of the author's son and, if confirmed, to prosecute and punish those responsible; if the allegations of torture are confirmed, to take appropriate steps to immediately release the author's son, quash his conviction and, if necessary, conduct a new trial, in accordance with the principles of fair hearings and other procedural safeguards; and to provide the author's son with adequate compensation for the violations of his rights. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present 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.