



## 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. 2405/2014\*, \*\*

<i>Communication submitted by:</i>	Sharobodin Yuldashev (represented by counsel, Valeryan Vakhitov)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	20 April 2012 (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 12 June 2012 (not issued in document form)
<i>Date of adoption of Views:</i>	29 October 2020
<i>Subject matter:</i>	Torture; arbitrary detention
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Torture; lack of effective investigation; arbitrary detention
<i>Articles of the Covenant:</i>	7, read alone and in conjunction with 2 (3) (a), and 9 (1), (3) and (4)
<i>Article of the Optional Protocol:</i>	2

1. The author of the communication is Sharobodin Yuldashev, a citizen of Kyrgyzstan of Uzbek ethnicity born in 1986. He claims that the State party has violated his rights under article 7, read alone and in conjunction with article 2 (3) (a), and article 9 (1), (3) and (4) of the Covenant. The Optional Protocol entered into force for the State party on 7 January 1995. The author is represented by counsel.

\* Adopted by the Committee at its 130th session (12 October–6 November 2020).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christoph Heyns, Marcia V.J. Kran, David H. Moore, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



**Facts as submitted by the author**

2.1 On 5 July 2011, at 9 p.m., several police officers broke into the author's house, handcuffed him and drove him to the Suleyman-Too police station.<sup>1</sup> They did not show a warrant nor did they identify themselves. While in the car, the officers put a plastic bag over the author's head and beat him on the head. Handcuffed and with a bag on his head, he was taken to the police station where two officers continued beating him with a baton on his stomach, kidneys and feet. They asked him to confess to a crime that had been committed one year earlier during the mass riots in southern Kyrgyzstan. The beatings continued for two hours until the author signed a confession.

2.2 The author claims that he was kept in incommunicado detention during the initial 27 hours after his arrest. At first, he was kept at the Suleyman-Too and Zapadnoye police stations and later at the Osh city temporary detention facilities. He was not allowed to contact his family or a lawyer. Because his whereabouts were unknown to his family, his father and a lawyer hired by his family visited several local police stations trying to locate him. On 5 and 6 July 2011, his father and the lawyer submitted complaints to the Osh city prosecutor's office and to the Osh provincial prosecutor's office about the author's unlawful detention and disappearance.<sup>2</sup> The author's whereabouts were revealed at 11.30 p.m. on 6 July 2011, when an investigator called the author's lawyer and informed him that the author had been brought to him by the police.

2.3 On 7 July 2011, the author was granted a meeting with his lawyer. In the presence of the investigator, he told the lawyer about the beatings that he had suffered at the hands of the police and he signed a complaint detailing those beatings, which was immediately submitted to the Osh city prosecutor's office. Once the lawyer had left, two police officers entered the author's cell and subjected him to further beatings for submitting a complaint. He was later visited by the investigator on the case who warned him not to cause any problems, otherwise there would be consequences not only for him but also for his father.

2.4 On 8 July 2011, the Osh city court ordered the author's pretrial detention on remand. The author was taken to the court 67 hours after his arrest, although domestic law requires that a person under arrest be brought before a judge within 48 hours. The author submits that the hearing only lasted approximately 20 minutes, the judge did not examine the legality of the arrest and the investigator did not provide any documents that would support his request for the author's detention on remand. Despite this, the court ordered the author's detention based on the assumption that he was a flight risk, without requiring the police to provide any evidence or considering an alternative to pretrial detention.

2.5 On 9 July 2011, four days after his arrest, in response to his complaint to the Osh city prosecutor's office, the author was ordered to undergo a forensic medical examination. The examination revealed four cuts on the author's forearm that could have been caused by contact with a hard round object not more than seven days before the examination.

2.6 On 12 July 2011, the author's lawyer appealed the decision of the Osh city court to the Osh provincial court. The appeal was denied on 19 July 2011.

2.7 On 25 November 2011, the Osh city court found the author guilty of participating in mass riots, destroying property, robbery, taking hostages and kidnapping, and sentenced him to 19 years in prison.

2.8 On 28 December 2011, the Osh provincial court quashed the decision of the trial court, acquitted the author of all charges except for participating in mass riots and reduced the

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<sup>1</sup> The author submits that this happened in the context of the events of 2010 in southern Kyrgyzstan. He refers to the report of Amnesty International, "Still waiting for justice: one year on from the violence in southern Kyrgyzstan" (London, 2011), in which it concluded that the ethnic bias in the law enforcement operations that followed the violence in June 2010 was evident in the resulting criminal investigations and prosecutions. The author claims that Kyrgyz authorities have disproportionately targeted ethnic Uzbeks and have been comparatively negligent in investigating and prosecuting crimes in which the suspects are more likely to be Kyrgyz. At the same time, the author does not make a claim under article 26 of the Covenant.

<sup>2</sup> The author provides copies of all complaints.

author's sentence to three years (suspended). The court ruled that there was no direct evidence that could prove that the author had committed any of the crimes except for his participation in mass riots.

2.9 On 25 April 2012, the Supreme Court of Kyrgyzstan overturned the decision of Osh provincial court, found the author guilty of all original charges and sentenced him to 16 years' imprisonment. The Supreme Court ruled that there was sufficient evidence to find the author guilty and that the appellate court did not objectively examine all available evidence.

2.10 On 16 July 2011, an investigator at the Osh city prosecutor's office conducted an inquiry into the complaints of unlawful detention and torture by the author but refused to open a criminal investigation. In his decision, the investigator held that the injuries to the author's forearm could have been caused by his father when he was trying to prevent the police from arresting the author. With regard to the author's whereabouts on 5 and 6 July 2011, the investigator determined that, during that time, the author was always with the named police officers, because they did not want to release him and risk the confidentiality of their attempt to apprehend the author's alleged accomplice. The inquiry took testimonies from the police officers involved, the author, his father and other witnesses present during the author's arrest during the evening of 5 July 2011.

2.11 On 19 July 2011, the refusal to open an investigation was quashed by the Osh city prosecutor and sent back for further inquiries. On 21 July 2011, the same investigator again refused to open an investigation for lack of corpus delicti. However, in his second refusal, the investigator stated that the author had been released shortly after his arrest on 5 July 2011 on condition that the next morning he would show the police the house of his accomplice. According to the investigator, after the author indicated the location of his accomplice's house to the police the next day, he was free to leave and was not held in detention any longer. None of the witnesses who were present during the author's arrest and were mentioned in the initial refusal dated 16 July 2011 were questioned again.

2.12 On 22 August 2011, the Office of the Prosecutor General of Kyrgyzstan quashed the second refusal to open a criminal investigation and itself opened an investigation into the author's allegations. On 12 December 2011, four police officers of the Suleyman-Too police department were charged with abuse of power and unlawfully entering the author's house. On 15 and 21 December 2011, the author submitted complaints to the Osh city prosecutor's office, requesting that an additional charge of torture be brought against the police officers. After those requests had been denied, the author unsuccessfully appealed the refusals to the Osh city court and the Osh provincial court.

2.13 On 20 April 2012, the Osh city court acquitted the four police officers of all charges. During the trial, the author and his co-defendant testified that they had been tortured by the officers. The court, however, decided that there was no direct evidence, other than those testimonies, that could prove that the officers were guilty of any crime. With regard to the author's injuries, the court stated that it was critical of the medical examination of 9 July 2011, which had revealed cuts to the author's forearm, because it contradicted the statement of the doctor from the Osh city temporary detention facilities, namely that he had not observed any injuries to the author when he had been brought to the facilities on 7 July 2011. On the unlawful entry into the author's house and his detention without a warrant, the court decided that the police had been empowered to take those actions as part of a wider search operation for perpetrators of crimes committed during the mass riots in southern Kyrgyzstan in 2010.

2.14 On 26 June 2012, the Osh provincial court upheld the verdict of the trial court. On 4 October 2012, the Supreme Court denied the author's appeal for a supervisory review.

2.15 The author submits that he has exhausted all available domestic remedies.

### **Complaint**

3.1 The author claims that he has suffered torture and ill-treatment at the hands of law enforcement officers and that the State party has failed to effectively investigate his complaints, in violation of article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant. The investigation into his claims of torture started only after the Prosecutor

General's Office had quashed the refusal by the Osh city prosecutor's office to investigate the author's allegations, more than 50 days after his arrest. The author argues that by then the authorities were unable to interview witnesses and collect important forensic evidence, which could have been vital in the prosecution of the police officers. For instance, the author's father personally witnessed the author's detention and filed one of the initial complaints against the police. However, he died shortly after the author's arrest and thus could not testify in court. Furthermore, the author notes that, since the Osh city prosecutor's office was investigating two cases in parallel, one against the author and another against the police officers, they were facing a conflict of interests and were not interested in an effective investigation of the charges against the police officers.

3.2 The author also claims a violation of article 9 (1), (3) and (4) due to his arbitrary arrest and detention, including his incommunicado detention during the first 27 hours, the failure to promptly bring him before a judge and the failure of the courts to examine the legality of his arrest and alternatives to pretrial detention. The author submits that, even though he was arrested on 5 July 2011, the official record of his arrest was dated 6 July, at 11.35 p.m. During the initial 27 hours, he was subjected to beatings by the police, was not allowed to contact his family to inform them of his whereabouts and was interrogated without a lawyer being present.

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

4.1 In a note verbale dated 27 December 2014, the State party submitted its observations on the merits of the communication. The State party submits that, on 7 July 2011, the author's lawyer submitted a complaint to the Osh city prosecutor's office alleging the author's unlawful detention and torture by the police. An inquiry conducted by the prosecutor's office determined that the author had been taken to the police station on suspicion of committing various crimes against the family of Z on 12 June 2010 with a group of armed men of Uzbek ethnicity. On 21 July 2011, the prosecutor's office refused to open a criminal case against the police for lack of corpus delicti. On 22 August 2011, the refusal was quashed by the Prosecutor General's Office and a criminal case was opened into allegations of torture, abuse of power and unlawful entry into the author's house.

4.2 According to the State party, the author and his co-defendant were arrested not on 5 July but rather on 6 July 2011. They did not report being tortured or ill-treated in their affidavits during the initial inquiry by the Osh city prosecutor's office, although later they changed their testimonies. The State party confirms that a forensic medical examination conducted on 9 July 2011 revealed injuries to the author's forearm; however, the doctor at the Osh city temporary detention facilities testified that he had not observed any injuries to the author when he had been brought into the facilities on 7 July 2011. The officers who were on duty that day at the detention facilities and the author's cellmates also testified that they had not heard the author complain about being beaten by the police. At the same time, the four police officers who had detained the author denied having exerted any physical or psychological pressure on him.

4.3 The State party notes that, on 1 December 2011, the four police officers of the Suleyman-Too police department who had arrested the author were charged with abuse of power and unlawfully entering the author's house and were temporarily relieved of their duties. On 9 December 2011, the Osh city prosecutor's office decided not to charge the police officers with torture for lack of evidence. On 20 April 2012, all four police officers were acquitted by the Osh city court. On 26 April 2012, the Osh city prosecutor's office appealed the verdict, which was denied on 26 June 2012 by the Osh provincial court. On 9 July 2012, the Supreme Court denied the supervisory appeal submitted by the Osh city prosecutor's office.

4.4 The State party submits that, since the author's case has been examined by the Supreme Court, reconsideration of the case is possible by a court only if there are new circumstances or by a prosecutor only if there is newly discovered evidence in the case.

4.5 According to the information provided by the State party, on 12 June 2010, the author, his co-defendant and several other persons of Uzbek ethnicity whom the police were not able to identify took hostage the family of Z, consisting of seven persons, including children. The

attackers beat and robbed the hostages and burned their house. They tied the hostages' hands, loaded them on a truck and held them captive, then exchanged them for persons of Uzbek ethnicity the following day.

4.6 The State party submits that the author's guilt was fully proven by the testimonies of the victims, who were able to identify the author and his co-defendant.

4.7 The State party notes that it is difficult to prove torture. For instance, witnesses who happen to be the victims' cellmates often refuse to testify against the police. However, the Prosecutor General's Office considers torture unacceptable and takes all measures within its legal powers to eliminate it. It conducts planned and unplanned inspections of places of detention; there are guidelines that require all torture victims to undergo psychological examinations; and prosecutors are required to petition courts for forensic medical examinations of victims whenever there are allegations of torture.

#### **Author's comments on the State party's observations on the merits**

5.1 On 16 March 2015, the author submitted his comments on the State party's observations. He rejects the arguments put forward by the State party and notes that they do not reflect the actual circumstances of the case.

5.2 The author notes that, in its submission, the State party does not deny that he was detained by the officers of the Suleyman-Too police department at 9 p.m. on 5 July 2011. He also notes that the State party does not address his incommunicado detention for 27 hours after apprehension, during which he was tortured and prevented from contacting his relatives, nor the fact that he was brought before a judge 67 hours after his arrest. According to the author, he was taken to court only after his lawyer submitted a complaint to the Osh city prosecutor's office on 8 July 2011, demanding the author's immediate release.

5.3 The author rejects the State party's claim that he did not report being tortured or ill-treated in his affidavit during the initial inquiry by the prosecutor's office. He reiterates his claim that he was tortured on 5 and 6 July 2011 and submits that, on 7 July 2011, when he was finally allowed to see his lawyer in the presence of the investigator, he displayed his injuries from the beatings and signed a complaint to the Osh city prosecutor detailing the torture. Furthermore, he notes that, after his meeting with his lawyer, he was again beaten by two police officers and his case investigator and warned not to cause any problems. On the same day, he informed his lawyer about those threats, who in turn submitted a motion to the Osh city prosecutor's office requesting the author's immediate transfer from the Osh city temporary detention facilities to the Osh pretrial detention facilities, to ensure his safety. According to the author, the law requires that such motions be granted immediately. He was, however, transferred to the Osh pretrial detention facilities only after 10 days. During those 10 days, he was subjected to further beatings and threats by the police designed to make him withdraw his complaint.

5.4 The author claims that the national authorities purposefully avoided conducting an effective investigation of his claims of torture. In support of this claim, he notes that it took four months for the State party to investigate his allegations of torture and charge the police officers, while the Code of Criminal Procedure of Kyrgyzstan requires such investigations to be completed within two months and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment calls for prompt investigation of all claims of torture. Furthermore, he notes that the police officers involved were never charged with the actual crime of torture, as prescribed under article 305-1 of the Criminal Code of Kyrgyzstan. Despite the repeated requests by the author's lawyer to add the charge of torture, the prosecutor's office and domestic courts refused to do so. The author also notes that, in accordance with the trial court's ruling, he cooperated with the police in locating his co-defendant, who in turn was named as the leader of the group that had committed the robbery and kidnapping. Despite this and several other mitigating circumstances, the author received a longer prison sentence than his co-defendant.<sup>3</sup> The author claims that this was done in retaliation for his refusal to drop his complaint of torture against the police.

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<sup>3</sup> The author's co-defendant was sentenced to 15 years in prison.

5.5 The author submits that, even though the State party has admitted the existence of torture in the country, no police officer has ever been convicted of torture despite numerous allegations made by participants in the events of 2010 in southern Kyrgyzstan.

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

6.1 On 29 March 2015, the author informed the Committee that, on 27 March 2015, the Osh provincial department of the National Security Committee had conducted a search of the offices of the Bir Duyno Kyrgyzstan human rights movement, where the author's lawyer works, and also at the places of residence of the lawyer and his colleagues. During the search, the authorities seized several items including laptops, memory cards, voice recorders and disks, which contained information about criminal cases the lawyers were working on. The laptops also contained information relating to individual communications submitted by the lawyers to the Committee, including the author's communication. The author submits that the searches constituted grave violations of domestic and international law.

6.2 On 30 March 2015, the Special Rapporteur on new communications and interim measures requested the State party to make sure that no reprisals were taken against the author, his family, witnesses and representatives as a result of the submission of the author's communication to the Committee.

#### **State party's additional observations on the merits**

7.1 In a note verbale dated 8 July 2015, the State party provided additional observations on the merits. According to the State party, the Prosecutor General's Office has determined that the author was brought to the Suleyman-Too police station at 9 p.m. on 5 July 2011, that torture was used to obtain his confession and that he was officially detained at 11 p.m. on 6 July 2011 when he was sent by an investigator to the Osh city temporary detention facilities.

7.2 The State party submits that the investigation of the author's allegations of torture was transferred to another investigator in the Osh city prosecutor's office on 21 October 2011 and its overall duration was formally extended to four months on 22 November 2011. The author and his co-defendant both denied having been tortured in their affidavits during the initial inquiry by the prosecutor's office. The author's co-defendant refused to undergo a forensic medical examination, while the author's examination revealed four small cuts on his forearm. Later, however, both men changed their testimonies and claimed to have been tortured by the police, but the author's co-defendant retracted his allegations of torture. Thus, on 9 December 2011, the prosecutor's office made a decision to drop the charges of torture against all four police officers for lack of evidence.

7.3 The State party recalls the charges against the author, as well as the judicial procedures that were carried out upon investigation of his allegations of torture against the police officers, as submitted in its note verbale dated 27 December 2014. The State party notes that all of the author's claims have been examined by numerous courts and appropriately addressed in accordance with existing domestic law.

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

8.1 In a note verbale dated 24 July 2015, the State party provided information on the search conducted of the offices of the Bir Duyno Kyrgyzstan human rights movement. The State party submits that, on 25 March 2015, two officers of the Migration Service of Kyrgyzstan requested the Osh city police department to take action against Umar Farouk, a national of the United States of America, who was allegedly collecting information on migration in the region. On the same day, the police detained Mr. Farouk and, after searching him, seized his personal electronic equipment, two procedural documents issued by the provincial department of the National Security Committee charging two local men with inciting inter-ethnic and religious hatred, various texts on the Islamic religion and business cards of the author's lawyer and his colleague. It was determined that Mr. Farouk had introduced himself to others as a journalist working for various foreign mass media outlets and collected information on the religious, inter-ethnic and cross-border situation in the south of the country. However, he was not accredited as a foreign journalist by the Ministry of Foreign Affairs as required by law.

8.2 A forensic examination of the video files discovered on Mr. Farouk's laptop concluded that they included calls for jihad and interreligious discord. On 26 March 2015, a criminal case was opened by the National Security Committee on grounds of "public calls for violent overthrow of the constitutional order" and for "inciting interreligious hatred".

8.3 On 27 March 2015, pursuant to a court ruling, the offices and places of residence of the author's lawyer and his colleague were searched, as a result of which a number of disks, laptops, memory cards and documents were seized. The State party notes that the officers conducting the search did not seize documents relating to the lawyers' criminal cases. On 30 April 2015, the Osh provincial court found the Osh city court's decision sanctioning the search of the lawyers' offices and houses unfounded. At the lawyers' request, electronic equipment and documents seized during the search of 27 March 2015 were partially returned to the lawyers. On 18 May 2015, the lawyers complained to the Osh city court, asking for all the equipment and documents seized during the search to be returned. On 19 May 2015, the Osh provincial prosecutor's office appealed the ruling of the Osh provincial court of 30 April 2015 to the Supreme Court; the appeal is pending. The State party proposes to provide further information on this matter after the Supreme Court renders its decision.

### **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 author's claim that he has exhausted all available legal domestic remedies. In the absence of any objection by the State party in that connection, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

9.4 In the Committee's view, the author has not sufficiently substantiated his claim that the seizure by the State party's authorities of his lawyer's equipment constituted a violation of the Covenant, and notably the right to bring a complaint to the Committee, as guaranteed by article 2 of the Optional Protocol. At the same time, the author has sufficiently substantiated his claims under article 7, read alone and in conjunction with article 2 (3) (a), and article 9 (1), (3) and (4) of the Covenant, for the purposes of admissibility. It therefore declares those latter claims admissible 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, as required under article 5 (1) of the Optional Protocol.

10.2 The Committee notes the author's claim that, at 9 p.m. on 5 July 2011, several police officers broke into his house without showing a warrant or identifying themselves, handcuffed him and drove him to the Suleyman-Too police station. While in the car, the officers put a plastic bag over the author's head and beat him. Handcuffed and with a bag on his head, he was taken to the police station, where two officers continued beating him with a baton on his stomach, kidneys and feet, asking him to confess to a crime that had been committed one year earlier. The beatings continued for two hours until the author signed a confession. The Committee observes that the author has submitted a detailed account of the torture to which he claims he was subjected and that the State party has acknowledged the fact that he was tortured. The Committee also notes the State party's argument that, even though the forensic medical examination carried out on 9 July 2011 revealed injuries to the author's forearm, the doctor at the Osh city temporary detention facilities testified that he had not noticed any injuries to the author on 7 July 2011 when the author had been examined at the facilities. Officers on duty at the temporary detention facilities that day and the author's cellmates also testified that they did not hear the author complain about beatings by the police.

The Committee also notes that, at the same time, the four police officers who had arrested the author denied using any physical or psychological pressure on him.

10.3 The Committee recalls that a State party is responsible for the security of any person it holds in detention and when an individual in detention shows signs of injury it is incumbent on the State party to produce evidence showing that it does not bear responsibility for that injury.<sup>4</sup> 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.<sup>5</sup> In the absence of any other evidence submitted by the State party to counter the claims made by the author and given the State party's general acknowledgement that the author was tortured, the Committee decides that due weight must be given to the author's allegations.

10.4 With regard to the State party's obligation to properly investigate the author's claims of torture, the Committee recalls its jurisprudence according to which a criminal investigation and a consequential prosecution are necessary remedies for violations of human rights, such as those protected by article 7 of the Covenant.<sup>6</sup> The Committee also recalls that, once a 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.<sup>7</sup>

10.5 The Committee notes that, in the present case, the author initially complained to the Osh city prosecutor's office on 7 July 2011, alleging that he had been tortured. On 9 July 2011, he underwent a forensic medical examination, which revealed four cuts to his forearm that could have been caused by contact with a hard round object not more than seven days before the examination. The author alleged that he had been further beaten and threatened by police officers for having complained of torture. In this connection, on 11 July 2011, the Osh city prosecutor's office received a motion requesting the author's immediate transfer from the Osh city temporary detention facilities to the Osh pretrial detention facilities to ensure his safety due to continuing beatings and threats by the police.

10.6 The Committee observes that, while a first inquiry into the allegations of torture took place on 16 July 2011 and the formal investigation into the allegations started on 22 August 2011, the police officers were not criminally charged until 12 December 2011. In this regard, the Committee notes the author's claim that, due to the delay in launching the investigation and bringing charges, the authorities failed to interview key witnesses, such as his father who had witnessed his arrest but passed away shortly after it, and to seize important forensic evidence. The Committee also notes the State party's arguments that the author did not report being tortured or ill-treated in his affidavit during the initial inquiry by the prosecutor's office. The Committee observes that these arguments seem to contradict the documents submitted by the author, which show that he has consistently complained about the beatings at the hands of the police and that he had undergone a forensic medical examination that revealed injuries to his forearm. Taking into account all of the foregoing considerations, the Committee concludes that the State party did not effectively investigate the author's allegations of torture, particularly due to the fact the investigation was hampered by several shortcomings. Accordingly, the Committee concludes that the facts before it disclose a violation of the author's rights under article 7, read alone and in conjunction with article 2 (3), of the Covenant.

10.7 The Committee notes the author's claim under article 9 (1) of the Covenant, due to his arbitrary arrest and detention, including incommunicado detention during the first 27 hours following his actual apprehension. The Committee recalls that, in accordance with

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<sup>4</sup> For example, *Eshonov v. Uzbekistan* (CCPR/C/99/D/1225/2003), para. 9.8; *Zheikov v. Russian Federation* (CCPR/C/86/D/889/1999), para. 7.2; and *Siragev v. Uzbekistan* (CCPR/C/85/D/907/2000), para. 6.2.

<sup>5</sup> For example, *Mukong v. Cameroon* (CCPR/C/51/D/458/1991), para. 9.2; and Human Rights Committee, *Bleier Lewenhoff and Valino de Bleier v. Uruguay*, communication No. 30/1978, para. 13.3.

<sup>6</sup> Human Rights Committee, general comment No. 20 (1992), para. 14, and general comment No. 31 (2004), para. 18.

<sup>7</sup> General comment No. 20 (1992), para. 14; and, for example, *Khalmamatov v. Kyrgyzstan* (CCPR/C/128/D/2384/2014), para. 6.4.

article 9 (1), no one shall be subjected to arbitrary arrest or detention and no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. According to the author, after his arrest on 5 July 2011, he was not allowed to contact his family or a lawyer, he was moved between two police stations and a detention facility, and was taken to the investigator for interrogation only at 11 p.m. on 6 July 2011. The Committee observes that, because his whereabouts were unknown to his family, his father and a lawyer hired by his family visited several local police stations in an attempt to locate the author. After failing to find him, they submitted several complaints to the Osh city prosecutor's office and to the Osh provincial prosecutor's office describing the author's detention and disappearance. The Committee also notes the State party's argument that the author was released shortly after his arrest on 5 July 2011. The Committee observes that the domestic authorities gave divergent explanations of the events of 5 and 6 July 2011, especially in the initial stages of the investigation into the author's arrest and detention.

10.8 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. Beyond the requirements of the Covenant that no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law, the State party denies that it held the author during the night in question, despite witness accounts to the contrary and the fact that his family members and lawyer were unable to locate him. In the absence of a clear and plausible explanation from the State party regarding the author's whereabouts, the conditions of his detention and the record of arrest, the Committee considers that the facts as submitted reveal a violation of the author's rights under article 9 (1) of the Covenant. In the light of this conclusion, the Committee will not examine separately the author's claims under article 9 (3) and (4) of the Covenant.

11. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of the author's rights under article 7, read alone and in conjunction with article 2 (3), and article 9 (1) of the Covenant.

12. 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 conduct a prompt and impartial investigation into the author's allegations of torture and, if confirmed, have those responsible prosecuted and adequately punished and to provide the author with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

13. 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.