



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. 2160/2012*, **

<i>Communication submitted by:</i>	Bakhadyr Dzhuraev (represented by counsel, Khusanbai Saliev)
<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; denial of fair trial; discrimination on the ground of ethnic origin
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture; arbitrary detention; denial of fair trial; discrimination on the ground of ethnic origin
<i>Articles of the Covenant:</i>	2 (3) (a), 7, 9 (1), 14 (1) and (3) (e) and (g) and 26
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Bakhadyr Dzhuraev, a Kyrgyz national of Uzbek ethnicity, born in 1974. He claims to be a victim of violations by Kyrgyzstan of article 7, read alone and in conjunction with article 2 (3) (a); and articles 9 (1), 14 (1) and (3) (e) and (g) and 26 of the Covenant. The Optional Protocol entered into force for the State party on 7 January 1995. The author is represented by counsel.

Facts as submitted by the author

2.1 On 29 October 2010, the Kara-Suu district court sentenced the author to 25 years' imprisonment for having organized riots, destroyed property, used illegal firearms and

* 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 Schuichi, Christoph Heyns, David H. Moore, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Héléne Tigroudja, Andreas Zimmermann and Gentian Zyberi.



murdered two or more people. The author submits that his criminal prosecution is related to the events of June 2010 in southern Kyrgyzstan.¹

2.2 At 6 a.m. on 21 June 2010, a group of special forces soldiers and police entered the author's house in Kara-Suu district of Osh province and severely beat him and his 15-year-old nephew. They took him away from his house but later left him unconscious in the street, where he was found by his neighbours and taken to a hospital in Nariman village. The author submits that his account of the beatings is supported by detailed reports provided by his wife and his sister to a local human rights non-governmental organization.² At 4 p.m. the same day, the police came to the hospital and took the author to the provincial police department in Osh city, where he was subjected to further beatings. Later in the evening, the author's relatives paid \$1,200 to the police and he was released. The next morning, the author was taken by his relatives to the hospital in Nariman, where he was treated for injuries to his head, face and legs. According to hospital records, the author told the doctors that he was beaten at his house by people in military uniform.³

2.3 On 23 June 2010, the author was again taken to the local police station, where he was questioned as a witness in a criminal case.⁴ On 24 June 2010, he was formally arrested on suspicion of having participated in ethnic clashes.⁵ The author submits that, after he was arrested, the police demanded \$10,000 from his relatives in exchange for his release.

2.4 On 26 June 2010, the Osh city court placed the author in pretrial detention. The author submits that the hearing lasted for 30 minutes, the investigator did not explain why pretrial detention was necessary⁶ and the judge did not look into the legality of his arrest or inquire about the cause of his injuries. Despite the ruling that the author should be detained in pretrial detention facility No. 5, he was kept in the temporary detention unit of the Osh provincial police department until at least 30 June 2010. The author submits that this was done to avoid the injuries caused by the beatings being discovered, since the staff of the pretrial detention facility would draw up an official record of all of his injuries upon arrival.

2.5 On 28 June 2010, the author's defence lawyer wrote to the Ministry of Internal Affairs complaining that the author had suffered a serious head trauma that required urgent medical treatment.⁷ According to the complaint, on 26 June 2010, an ambulance had been called to the temporary detention unit for the author, and the doctors had recommended that his injuries be treated in hospital. The lawyer requested that the author be transferred to a hospital or to pretrial detention facility No. 5, where there were appropriate medical facilities for his injuries to be treated. On 30 June 2010, the lawyer received a letter from the investigation department of the Ministry of Internal Affairs informing him that the head of the temporary detention unit in Osh had been asked to transfer the author to pretrial detention facility No. 5.⁸ While the author was in pretrial detention, he and his counsel, fearing repercussions, did not demand that the authorities conduct an investigation into his allegations of torture. However, the author submits that, even without him submitting an official complaint, an investigation should have been launched by the case investigator, who had seen his injuries when questioning him on 23 and 24 June 2010, or by the Osh city court on 26 June 2010.

¹ The author refers to riots and ethnic clashes between Uzbek and Kyrgyz groups, during which several hundred people died, that took place in May–June 2010 in the Osh and Jalal-Abad provinces of southern Kyrgyzstan.

² The author provides copies of the testimonies.

³ The author submits his hospital records, which show that he was taken away by the police on 22 June 2010, was absent on 23 June 2010 and then was brought in by the police for medical treatment on 24 June 2010 for four hours, after which he was again taken away by the police.

⁴ The author submits a copy of the written record of the questioning.

⁵ It is not clear from the submission whether the author was released back to the hospital on 23 June or kept overnight at the police station. A copy of the record dated 24 June is also submitted.

⁶ In the court ruling, it is noted that the investigator asked for the author to be remanded in custody due to the gravity of the crime committed. It is further stated that the court authorized the author's remand on grounds of the risk that he would flee to another country and that, if he were released, he would obstruct the investigation.

⁷ The letter does not state the cause of the head injury.

⁸ According to a later submission by the State party, the author was transferred to pretrial detention facility No. 5 on 10 July 2010.

2.6 During the trial on 29 September 2010, the author and his co-defendants told the Kara-Suu district court judge that their confessions had been obtained through torture and ill-treatment and should not be used as evidence. During a break in the court hearing, all of the defendants, including the author, were taken to holding cells and beaten by soldiers from the local military unit, who told them to confess their guilt.⁹ On 30 September 2010, several lawyers for the defendants complained to the court about the beatings of 29 September, but neither the judge nor the prosecutor took any action. On the contrary, while leaving the courtroom after the hearing, the lawyers themselves were assaulted by friends and relatives of victims of the ethnic clashes.

2.7 The author also claims that numerous violations occurred in the conduct of the trial. Instead of being held in the Kara-Suu district court, it was conducted on the premises of a military unit in Osh. Some of the defendants' relatives were not allowed to attend the trial.¹⁰ The court did not take any action to provide security for trial participants or control the hostile behaviour of some of the participants; as a result, defendants' lawyers and relatives were constantly threatened and assaulted by relatives of the victims, often in the presence of the police, who chose not to interfere. Witnesses were afraid to come to the court and provide testimony on behalf of the defendants, and those who wanted to attend were often blocked by victims' relatives. The author claims that his counsel provided the court with a list of witnesses who could have confirmed the author's alibi, but the court did not call them. The author refers to a report by Human Rights Watch entitled "Distorted Justice", which supports his claims of an unfair trial, threats against lawyers, intimidation and assault of witnesses and defendants' relatives and other violations. According to the report, at one point the threats became so serious that the defendants' lawyers were forced to call a press conference and threatened to stop working on the cases related to the June 2010 events until the authorities ensured their security.

2.8 The author submits that he was prosecuted because of his Uzbek ethnicity and refers to a 2011 report by Amnesty International entitled "Still waiting for justice. One year on from the violence in southern Kyrgyzstan", which concludes that the ethnic bias in the law enforcement operations that followed the June 2010 violence was evident in the resulting criminal investigations and prosecutions. According to the report, ethnic Uzbeks accounted for 75 per cent of the casualties and sustained 90 per cent of property losses. However, official figures released in November 2010 revealed that, of the 271 individuals who had been taken into custody in relation to the violence, 230 were ethnic Uzbeks and only 29 were ethnic Kyrgyz. The author also refers to the report by Human Rights Watch, which asserts 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 of Kyrgyz ethnic origin. While most victims of the June 2010 violence were ethnic Uzbek, the majority of detainees – almost 85 per cent – were also ethnic Uzbek. Moreover, statements provided in the report indicate widespread use of ethnic slurs against Uzbeks during detention and failure to address ethnically motivated threats and violence during trials.

2.9 On 27 December 2010, the Osh provincial court denied the author's appeal. On 12 May 2011, the Supreme Court of Kyrgyzstan rejected the author's supervisory appeal. The author claims 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 launch an investigation into his complaints, in violation of article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant.

⁹ The trial was held in the building of the local military unit of the Ministry of Internal Affairs.

¹⁰ The author does not say who prevented the relatives from attending the trial. He submits an affidavit signed by his wife where she states that she and several witnesses were not allowed to enter the territory of the military unit and were threatened and assaulted by a group of people while standing outside.

3.2 The author claims a violation of article 9 (1) of the Covenant because the Osh city court failed to examine the legality of his arrest and did not consider any alternatives to detention.

3.3 The author claims that he has not received a fair and public trial, in violation of his rights guaranteed under article 14 (1) of the Covenant, because his trial was held on the premises of a military unit. He also claims a violation of article 14 (3) (e) because the court did not summon witnesses who could have confirmed his alibi to testify in court and, in general, due to security threats, the defence was not able to obtain the attendance and examination of witnesses for the defence under the same conditions as witnesses for the prosecution; he furthermore claims a violation of article 14 (3) (g) because he was forced to confess to being guilty of the charges against him.

3.4 The author also claims that he was unfairly targeted because of his Uzbek ethnicity, in violation of article 26 of the Covenant.

State party's observations on admissibility and the merits

4.1 By note verbale of 4 October 2012, the State party submitted its observations on the merits of the communication. The State party submits that, on 13 June 2010, the head of the Kara-Suu district police, along with his driver and the deputy mayor of Kara-Suu district, drove to the Tadjik-Abad neighbourhood in Kara-Suu district to uphold public order after receiving reports of mass riots and ethnic clashes. While talking to leaders of the Uzbek side, they were attacked by unknown men, as a result of which the head of the district police and his driver were killed. The prosecutor's office of Osh province charged 10 men, including the author, with crimes. On 29 October 2010, the Kara-Suu district court found the author guilty of the charges against him and sentenced him to 25 years in prison, with confiscation of property. On 27 December 2010, the Osh provincial court changed one of the charges of which he had been found guilty from murder to complicity in murder, but upheld the final sentence. On 12 May 2011, the Supreme Court of Kyrgyzstan upheld the decision of the Osh provincial court.

4.2 The State party submits that the Osh city court examined the legality and reasonableness of the author's arrest and decided to remand him in custody until trial. The State party notes, however, that the author has not appealed the decision of the first instance court to the court of cassation.

4.3 With regard to the ruling of the Kara-Suu district court of 29 October 2010, the State party reiterates that it was upheld by both the Osh provincial court and the Supreme Court of Kyrgyzstan. The State party notes that the Supreme Court's decision is final and cannot be appealed further.

4.4 The State party submits that, according to the author's medical records, on 10 July 2010, he was transferred from the temporary detention unit to detention facility No. 50, where he underwent a medical examination which concluded that his health condition was satisfactory and that he did not have any health-related complaints. Furthermore, on 4 February 2011, the author was transferred to detention facility No. 21 to serve his sentence and since then has not submitted any complaints about any injuries received to the facility's medical staff.

Author's additional comments

5. On 29 March 2015, the author informed the Committee that, on 27 March 2015, the Osh provincial department of the National Security Committee conducted searches in the offices of the Bir Duyno Kyrgyzstan human rights movement, where the counsel for the author works, and at the places of residence of the counsel and his colleague, Valerian Vakhitov. During the search, the authorities seized laptops, memory cards, voice recorders and disks, which contained information about criminal cases the lawyers were involved in. The laptops also contained information related to individual communications submitted to

the Committee, including the author's communication. The author submits that the searches amounted to grave violations of domestic and international law.¹¹

State party's additional observations

6.1 In a note verbale dated 24 July 2015, the State party provided information on the search conducted in 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 counsel and his colleague. It was found that Mr. Farouk had introduced himself to others as a journalist working for various foreign mass media outlets, who was collecting 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 the law.

6.2 A forensic theological 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 "inciting interreligious hatred".

6.3 On 27 March 2015, pursuant to a court ruling, the offices and places of residence of the author's counsel 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 related 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, some of the electronic equipment and some of the documents seized during the search of 27 March 2015 were 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 of Kyrgyzstan; the appeal is pending. The State party proposes to provide further information on this matter after the Supreme Court of Kyrgyzstan renders its decision.

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

7.1 On 12 December 2017, the author reiterated that he had exhausted all domestic remedies. He was not able to exhaust all domestic legal remedies with regard to his claims of torture, because, if he complained, he would have endangered the lives of witnesses and his relatives.

7.2 The author rejects the State party's submission that his health was satisfactory and that he did not complain about any injuries to the pretrial detention facility's medical staff. He submits that the photograph taken from his criminal case file, where he can be seen sitting in the police department with a bandaged head and a hematoma under his right eye, proves that he was subjected to beatings.¹² Moreover, on 29 September 2010, he was again subjected to torture during the recess in the court hearing, when several soldiers from the local military unit and policemen entered the cells in which he and his co-defendants were being held and started beating them to force them to confess to all the crimes with which they were charged. The author argues that the above-mentioned facts refute the State party's allegations that,

¹¹ In a note verbale dated 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 authors, their families, witnesses or representatives as a result of the submission of the communications.

¹² The photograph was provided with the communication.

after being transferred from the temporary detention unit to detention facility No. 50, he underwent a medical examination which concluded that his health condition was satisfactory.

Issues and proceedings before the Committee

Considerations 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 notes the State party's claim that the author failed to exhaust domestic remedies in respect of his claim of arbitrary arrest because he did not appeal the decision of the Osh city court to remand him in custody. In the absence of any pertinent explanation from the author in this connection, the Committee considers that the author has failed to exhaust domestic remedies regarding his claim under article 9 (1), as required by article 5 (2) (b), and finds his claim inadmissible.

8.4 The Committee further observes that, when claiming a violation of article 26, the author refers to figures and information obtained from various reports by international human rights organizations. The Committee does not question the accuracy of the information. However, it considers that this information does not sufficiently substantiate the position of the author that, under the particular circumstances, he personally was the victim of direct or indirect discrimination on the basis of his ethnic origin. Accordingly, the Committee declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.5 In the Committee's view, the author has sufficiently substantiated his claims under article 7, read alone and in conjunction with article 2 (3) (a), and article 14 (1) and (3) (e) and (g) of the Covenant, for the purposes of admissibility. It therefore declares them admissible and proceeds with its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that, early in the morning on 21 June 2010, a group of special forces soldiers accompanied by police officers entered his house in Kara-Suu district of Osh province and severely beat him and his 15-year-old nephew; that they took him away but later left him unconscious in the street, where he was found by his neighbours, who took him to a hospital in Nariman village, where his injuries were recorded; that later that day, the police came to the hospital and took him to the provincial police department in Osh city, where he was subjected to further beatings. The Committee observes that the author has submitted a detailed account of the ill-treatment to which he claims having been subjected, supporting medical evidence and accounts of eyewitnesses. The Committee also notes that the author's allegations remained unrefuted by the State party except for its submission that when, on 10 July 2010, the author was transferred from the temporary detention unit to detention facility No. 50, he underwent a medical examination which concluded that his health condition was satisfactory and that he did not have any health-related complaints.

9.3 The Committee further notes the author's claim that, during the trial, on 29 September 2010, the author and his co-defendants told the Kara-Suu district court judge that their confessions had been obtained through torture and ill-treatment. The Committee also notes the author's claim that, during a break in the court hearing that day, a group of police officers and soldiers beat him and other defendants in the case and told them to confess their guilt in court. The Committee observes that these allegations have not been refuted by the State party.

9.4 The Committee recalls that, once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate the complaint promptly and impartially.¹³ In the absence of any relevant information from the State party, specifically in relation to any effective investigation undertaken to address expeditiously, independently and adequately the allegations advanced by the author,¹⁴ due weight must be given to the author's allegations. In these circumstances, the Committee considers that the facts as submitted reveal that the State party has failed in its duty to adequately investigate the allegations put forward by the author. Accordingly, the Committee concludes that the facts as presented amount to a violation of the author's rights under article 7, read alone and in conjunction with article 2 (3), of the Covenant.

9.5 The Committee notes the author's claim under article 14 (1) that the trial was conducted on the premises of a military unit in Osh and that some of the defendants' relatives were not allowed to attend. The Committee also notes the author's claim that the trial court did not take any action to provide security for trial participants or control the hostile behaviour of some of the participants; as a result, defendants' lawyers and relatives were constantly threatened and assaulted by relatives of the victims, often in the presence of the police, who chose not to interfere. The Committee recalls its general comment No. 32 (2007), in which it states that all trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly and that the publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large.¹⁵ The Committee notes that article 14 (1) acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice.¹⁶ However, the State party had not shown that any of these conditions applied in the present case. The Committee reiterates that a hearing is not fair if, for instance, the defendant in criminal proceedings is faced in the courtroom with the expression of a hostile attitude from the public or support for one party that is tolerated by the court, thereby impinging on the right to defence, or is exposed to other manifestations of hostility with similar effects.¹⁷ In the absence of any explanation by the State party in this connection, the Committee considers that due weight must be given to the author's allegations. The Committee therefore concludes that the facts as submitted disclose a violation of the author's rights under article 14 (1) of the Covenant.

9.6 Having come to a conclusion regarding a violation of the author's rights under article 7, read alone and in conjunction with article 2 (3), and under article 14 (1) of the Covenant, the Committee decides not to examine the claims regarding the author's rights under article 14 (3) (e) and (g) separately.

10. 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 under article 14 (1) of the Covenant.

11. In accordance with 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. In the present case, the State party is under an obligation, inter alia, (a) to quash the author's conviction and, if necessary, conduct a new trial, in accordance with the principles of fair hearings and other procedural safeguards provided by the Covenant; (b) to conduct a prompt and impartial investigation into the author's allegations of torture and, if the allegations are confirmed, have the persons responsible prosecuted; and (c) to provide the author with adequate

¹³ General comment No. 20 (1992), para. 14.

¹⁴ See, for example, *Abromchik v. Belarus* (CCPR/C/122/D/2228/2012), para. 10.4; *Allaberdiev v. Uzbekistan* (CCPR/C/119/D/2555/2015), para. 8.3.

¹⁵ General comment No. 32 (2007), para. 28.

¹⁶ *Ibid.*, para. 29.

¹⁷ *Ibid.*, para. 25.

compensation. 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 or 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 language of the State party.
