



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-fourth session
13 – 31 October 2008

VIEWS

Communication No. 1275/2004

<u>Submitted by:</u>	Mr. Anarbai Umetaliev and Mrs. Anarkan Tashtanbekova (represented by counsel, Mr. Sartbai Zhaichibekov)
<u>Alleged victims:</u>	The authors and the authors' deceased son, Mr. Eldiyar Umetaliev
<u>State party:</u>	Kyrgyzstan
<u>Date of communication:</u>	20 January 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 30 March 2004 (not issued in document form)
<u>Date of adoption of Views:</u>	30 October 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Arbitrary deprivation of the life of a Kyrgyz national in the course of an anti-riot security operation; failure to conduct an adequate investigation and to initiate proceedings against the perpetrator/s; denial of justice.

Substantive issues: Right to life; arbitrary deprivation of life; denial of justice; effective remedy.

Procedural issues: None.

Articles of the Covenant: 6, paragraph 1; 2, paragraph 3 (b) and (c)

Articles of the Optional Protocol: None

On 30 October 2008, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1275/2004.

[ANNEX]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of
the Optional Protocol to the International Covenant on Civil and Political rights

Ninety-fourth session

concerning

Communication No. 1275/2004*

Submitted by: Mr. Anarbai Umetaliev and Mrs. Anarkan
Tashtanbekova (represented by counsel,
Mr. Sartbai Zhaichibekov)

Alleged victims: The authors and the authors' deceased son,
Mr. Eldiyar Umetaliev

State party: Kyrgyzstan

Date of communication: 20 January 2004 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant
on Civil and Political Rights,

Meeting on 30 October 2008,

Having concluded its consideration of communication No. 1275/2004, submitted to the
Human Rights Committee by Anarbai Umetaliev and Anarkan Tashtanbekova in their own
names and on behalf of Eldiyar Umetaliev under the Optional Protocol to the International
Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the
communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the communication, Mr. Anarbai Umetaliev, a Kyrgyz national born in
1953, and Mrs. Anarkan Tashtanbekova, also a Kyrgyz national born in 1958, are the parents of

* The following members of the Committee participated in the examination of the present
communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine
Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Ahmed
Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael
Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

Mr. Eldiyar Umetaliev, a Kyrgyz national born in 1979, who died on 18 March 2002 in Kerben, Kyrgyzstan. The authors state that they are acting on their own behalf and on behalf of their son. They claim a violation by Kyrgyzstan of their son's rights and of their own rights under article 6, paragraph 1; and article 2, paragraph 3 (b) and (c), of the International Covenant on Civil and Political Rights. The authors are represented by counsel, Mr. Sartbai Zhaichibekov.

1.2 The Optional Protocol entered into force for the State party on 7 January 1995.

Factual background

2.1 On 5 January 2002, Mr. Azimbek Beknazarov, who was a Member of Parliament (the Zhogorku Kenesh) from the opposition party, was detained by police in the Jalalabad region of Kyrgyzstan, accused of failing to investigate a murder in 1995 when he worked as an investigator in the prosecutor's office of the region. His supporters believed that the charges were brought in order to punish him for criticizing the government, in particular for his criticisms of ceding Kyrgyz territory to China as part of a frontier delineation agreement. On 6 January 2002, his supporters began a campaign to have him released.

2.2 On 17 March 2002, in Bospiek, a demonstration in support of Beknazarov was dispersed by militia, killing four people, and wounding six. On 18 March 2002, in the proximity of the Aksy District Department of the Ministry of the Interior in Kerben, a similar campaign for his release culminated in militia opening fire on demonstrators in an attempt to disperse the crowd, killing Eldiyar Umetaliev and wounding six people. The authors provided six affidavits from eye-witnesses, including from Eldiyar Umetaliev's two friends, who were at the demonstration, in which they described the incident, the use of automatic weapons, and the type of car from which Eldiyar Umetaliev was shot.

2.3 Eldiyar Umetaliev's body was transported to the morgue by an ambulance. An autopsy was then performed by a pathologist from the Jalalabad Regional Forensic Medical Centre in the presence of a pathologist from the Aksy District Forensic Medical Centre. Upon the request of an investigator, who did not introduce himself, the author's lawyer was not allowed to be present during the autopsy. According to the authors, the pathologist from the Aksy District Forensic Medical Centre stated that a fatal bullet was fired at Eldiyar Umetaliev from an automatic weapon. However, the official forensic medical report of 28 March 2002 signed by the pathologist from the Jalalabad Forensic Medical Centre states that Umetaliev was shot dead from a hunting rifle. Eldiyar Umetaliev's death certificate of 4 April 2002 attributes his death to a "perforating firearms pellet wound in the neck and upper lip"¹. The authors submit that the entry and exit bullet holes on their son's body, seen by the lawyer prior to the autopsy, do not correspond to the wounds inflicted by a hunting rifle's pellets.

2.4 On 20 March 2002, the authors submitted a request to the National Security Service for an investigation into their son's death. No response was forthcoming. On 23 October 2002, they submitted a request for an investigation to the Kyrgyz General Prosecutor, copied to Beknazarov, the Member of Parliament of the opposition, whose case had been closed and parliamentary mandate restored on 28 June 2002. On 28 October 2002, Baknazarov petitioned the General

¹ For this reason, the authorities were continuously replying to the authors that they were searching for an owner of a hunting rifle.

Prosecutor to investigate into Eldiyar Umetaliyev's death. On 6 November 2002, the authors' request was transmitted by the General Prosecutor's Office to the Head of the Investigation Department of the National Security Service, with a request to take additional measures to establish the circumstances of Eldiyar Umetaliyev's death. On 26 November 2002, the authors submitted a further request for an investigation, to the Kyrgyz General Prosecutor, as well as to the Prime Minister and the Chairperson of the National Security Service. No reply was received.

2.5 By a letter from the National Security Service of 3 January 2003, the authors were informed that the criminal case initiated to investigate Eldiyar Umetaliyev's death was suspended, as the investigators were unable to identify the perpetrator/s. In the same letter, however, the authors were also informed that special operational units of the National Security Service and of the Ministry of Internal Affairs were tasked to conduct a supplementary investigation into the circumstances of their son's death. Subsequently, the authors submitted a request for an investigation to the Head of the Department of Public Security of the Ministry of Internal Affairs. On 16 January 2003, the Head of the Department replied that on an unspecified date, a joint criminal case on the events in Bospiek (17 March 2002) and Kerben (18 March 2002) was opened by the Aksy District Prosecutor. On 22 March 2002, the General Prosecutor transferred further investigation in the case to the National Security Service. On 28 December 2002, four officers were sentenced to various terms of imprisonment by the Kyrgyz Military Court. According to the authors, these convictions only related to the events which took place in Bospiek on 17 March 2002.

2.6 On 26 February 2003, the Deputy Head of the Investigation Department of the National Security Service sent a letter to the authors, confirming *inter alia* that those responsible for the Bospiek incident on 17 March 2002 were identified and brought to justice; whereas their son's criminal case was split from that of the Bospiek incident and investigated separately. The investigation was however suspended, as the investigators could not identify the perpetrator/s responsible for Eldiyar Umetaliyev's death. In the same letter, Eldiyar Umetaliyev's parents were again informed that special operational units of the National Security Service and of the Ministry of Internal Affairs were tasked with conducting a supplementary investigation into the circumstances of their son's death and that the supplementary investigation was still on-going.

2.7 On 22 April 2003, and on an unspecified date, the authors submitted further requests to the Kyrgyz President and to the Chairperson of the National Security Service, in which they asked specific questions on the status of the investigation. On 12 June 2003, the National Security Service replied that a criminal case initiated to establish the circumstances of Eldiyar Umetaliyev's death was investigated by the Investigation Department of the Jalalabad Regional Department of the National Security Service. Therefore, further information should be requested from the Investigation Department of the Jalalabad Regional Department of the National Security Service.

2.8 On 17 June 2003, a further request for an investigation was submitted by the authors to the Kyrgyz President; it was subsequently transmitted to the Chairperson of the Supreme Court by the Deputy Head of the Legal Department of the Presidential Administration. On 27 June 2003, the Deputy Chairperson of the Supreme Court replied that the investigation in the criminal case initiated to investigate Eldiyar Umetaliyev's death was still on-going; therefore, further information should be obtained from either the investigation bodies or the prosecutor's office.

On 12 August 2003, the authors submitted another request for an investigation, to the Kyrgyz Prime Minister. On 27 August 2003, the Deputy Head of the Prime Minister's Office replied that because of the separation of powers, the government could not interfere in the examination of criminal cases by the judiciary.

2.9 On 10 September 2003, the authors submitted requests for information on the investigation to the Head of the Aksy District Department of the National Security Service and to the Head of the Aksy District Department of Internal Affairs. No reply was received to any of these requests. On 10 September 2003, they submitted another request for information to the Aksy District Prosecutor. On 12 September 2003, this request was transmitted with a covering letter to the Head of the Investigation Department of the National Security Service by the Aksy District Prosecutor.

2.10 On 25 December 2003, the authors' lawyer requested the Head of the Jalalabad Forensic Medical Bureau to provide him with copies of the medical certificates on the cause of the death of the five individuals who died on 17 and 18 March 2002, including that of Eldiyar Umetaliyev. On an unspecified date, the Jalalabad Forensic Medical Bureau refused to provide any documents in connection with the Aksy events.

2.11 On 25 December 2003, the authors submitted a motion to the General Prosecutor, copied to Beknazarov, the opposition Member of Parliament, to recognise them as victims in the criminal investigation in their son's death and requested specific information on the investigation. On the same day, similar motions were submitted to the Chairperson of the National Security Service and to the Head of the Investigation Department of the National Security Service, to which no replies were received.

2.12 On 8 January 2004, the Deputy Prosecutor General transmitted the authors' motion of 25 December 2003 to the Jalalabad Regional Prosecutor and requested him to inform the authors, Beknazarov (who supported the authors' petition) and the General Prosecutor's Office about the measures taken. On an unspecified date, the Jalalabad Regional Prosecutor replied that the criminal case was investigated by the Investigation Department of the Jalalabad Regional Department of the National Security Service, but was suspended on 3 May 2003, as the perpetrator/s could not be identified. He also stated that on 4 December 2003, the Jalalabad Regional Prosecutor's Office reviewed the case and indicated that the investigation would be reinforced.

2.13 On an unspecified date, the authors submitted a civil claim to the Aksy District Court, requesting compensation for their son's death and for the moral and material damages sustained. On an unspecified date, the Aksy District Court dismissed the authors' claim.

The complaint

3.1 The authors claim that the State party violated their and their son's rights under article 6, paragraph 1; and article 2, paragraph 3 (b) and (c), of the Covenant, by arbitrarily depriving Eldiyar Umetaliyev of his life; by subsequently failing to take appropriate measures to investigate the circumstances of his death and by failing to bring those responsible to justice.

3.2 The authors further claim that, as a result of the State party's failure to take appropriate measures to investigate the circumstances of Eldiyar Umetaliyev's death, they are deprived of the possibility of obtaining compensation for his death, for the moral and material damages sustained.

State party's submissions on the admissibility and merits of the communication

4.1 On 24 May 2004, the State party submitted that Eldiyar Umetaliyev's corpse with a firearms wound in the neck was discovered in the course of the Aksy events on 18 March 2002 in Kerben. The circumstances of his death were investigated within the framework of a criminal case initiated to investigate "mass riots". According to the requirements of the Criminal Procedure Code, while transmitting this criminal case to the court, materials related to Eldiyar Umetaliyev's death were separated from the rest of the case file. The separate criminal case initiated to establish the circumstances of Eldiyar Umetaliyev's death is being investigated by the Investigation Department of the Jalalabad Regional Department of the National Security Service. The investigation, however, was suspended for failure to identify the perpetrator/s; "operational measures" nevertheless continue in order to identify and bring to justice those responsible for Eldiyar Umetaliyev's death.

4.2 As for the authors' civil claim for compensation from the State party's authorities for their son's death and for the moral damages sustained, the State party submits that these proceedings were also suspended pending completion of the criminal case.

Authors' comments on the State party's submissions

5.1 On 5 August 2004, the authors submit that contrary to the State party's assertion that "operational measures" continue to identify and bring to justice those responsible for Eldiyar Umetaliyev's death, the State party is effectively doing nothing to pursue the investigation. Neither a meaningful reply nor any relevant information was received from the State party's authorities, before the submission of the communication to the Committee.

5.2 After the present communication was submitted to the Committee, the authors were allowed, on 14 May 2004, to access the materials of the criminal case initiated to investigate the circumstances of Eldiyar Umetaliyev's death for the first time. On 7 June 2004, the authors received a copy of the case file materials from the investigation. From this, the authors learnt that the criminal case was suspended by the investigator on 15 September 2002, because it was impossible to identify the perpetrator/s responsible for their son's death, as well as due to the expiry of the time limit allocated for the investigation. The materials also showed that, on 3 May 2003, the investigation was resumed by the prosecutor, and that, on an unspecified date, the investigator requested information from the Jalalabad Regional Department of Internal Affairs and the Aksy District Department of Internal Affairs. There was no indication on the file that any reply to his request was received from any of the Departments.

5.3 In examining the investigation file, the authors noted that there were in fact two forensic medical reports, one by the Jalalabad Forensic Medical Centre dated 28 March 2002 (paragraph 2.3) and one by the Republican Forensic Medical Bureau dated 25 April 2002. The authors refer to the certificate of 25 April 2002, according to which the wound in Eldiyar Umetaliyev's neck resulted from bullet of 5-6 mm in diameter that contained copper. The expert concluded that

such a bullet could be a 5.45 mm bullet from a AK-74 machine-gun (Kalashnikov's machine-gun), a PSM pistol (compact self-loading pistol) or a 5.6 mm bullet from a "Bars carbine" (hunting rifle). According to the authors, bullets from "Bars carbine" do not contain copper, so in their view it must have come from a machine gun or pistol, which they claim are being used exclusively by military personnel. The authors also argue that the same medical report refers to a pellet having been removed from Eldiyar Umetaliev's "back and buttocks" which appeared to result from ammunition of 3-4 mm, containing lead. According to Eldiyar Umetaliev's father and affidavits submitted by the two witnesses who were present during the autopsy, not one but three metal pieces of 3-4 mm each were extracted from Eldiyar Umetaliev's back and buttocks. The authors also challenge the conclusion of the Jalalabad Regional Forensic Medical expert of 28 March 2002 which stated that Eldiyar Umetaliev sustained "a perforating firearms pellet wound of the neck and upper lip".

5.4 The authors argue that the State party failed to take effective measures to identify those responsible for Eldiyar Umetaliev's death, such as, to conduct a ballistic expert examination of the weapons used by the law-enforcement officers and machine-gun and pistol shells collected from the crime scene. They submit that in the course of investigation not a single officer of the special militia or of the regular militia was interrogated, despite overwhelming testimony that militia officers opened fire on the day in question.

5.5 The authors further submit that on 30 March 2004, the Chairman of the Aksy District Court decided to suspend their civil suit for compensation, because the respective criminal case had not been completed. The decision of 30 March 2004 was not challenged in the court of appeal. On 5 July 2004, the decision of the Aksy District Court was upheld through the supervisory review by the Presidium of the Jalalabad Regional Court, on the same grounds.

Supplementary submissions by the State party on the authors' comments

6. On 11 November 2004, the State party submits that on an unspecified date, the decisions of the Aksy District Court of 30 March 2004 and of the Jalalabad Regional Court of 5 July 2004 were again appealed by the authors through the supervisory review procedure. On 8 October 2004, the civil case was transmitted to the Supreme Court, where it will be examined in compliance with the civil law procedure. The criminal case initiated to establish the circumstances of Eldiyar Umetaliev's death remains suspended. The General Prosecutor's Office might, however, resume investigation in the future upon receipt of supplementary information.

Authors' comments on the State party's supplementary submissions

7.1 On 24 January 2005, with reference to the State party's argument that the authors' civil case is still pending before the Supreme Court (paragraph 6 above), the authors submit a copy of the Supreme Court decision of 26 November 2004, upholding the decision of the Jalalabad Regional Court of 5 July 2004 on the ground that the respective criminal case has not yet been completed.

7.2 The authors also provide a copy of a letter of 24 August 2004, sent to Beknazarov, the Member of Parliament, by the First Deputy General Prosecutor, which informs him *inter alia*, that in the opinion of the prosecutor's office, "the use of firearms by the Ministry of Interior's officers [during the Aksy events] was entirely lawful."

Issues and proceedings before the Committee:**Consideration of admissibility**

8.1 Before considering any claim contained in the communications, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communications are admissible under the Optional Protocol to the Covenant.

8.2 The Committee notes that the same matter is not being examined under any other international procedure, in line with the requirements of article 5, paragraph 2(a), of the Optional Protocol. In the absence of any State party's objection, the Committee considers that the requirements of article 5, paragraph 2(b), of the Optional Protocol have been met.

8.3 The Committee considers that the authors' claims under article 6, paragraph 1, and article 2, paragraph 3 (b) and (c), of the Covenant, have been sufficiently substantiated, for purposes of admissibility, and declares them admissible.

Consideration of the merits

9.1 The Human Rights Committee has considered the communications in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

9.2 With regard to the authors' claim that article 6, paragraph 1, was violated, the Committee recalls its General Comment No. 6 on article 6, which states that the right enshrined in this article is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation.² The Committee recalls its jurisprudence that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by article 6.³ It further recalls its General Comment No. 31, that where investigations reveal violations of certain Covenant rights States parties must ensure that those responsible are brought to justice.⁴

9.3 The Committee notes that the State party concedes that Eldiyar Umetaliyev's corpse was discovered on 18 March 2002 in the course of the Aksy events in Keben, with a wound on his neck from a firearm. As regards the subsequent investigation, the State party merely states that it was suspended for failure to identify the perpetrator/s responsible. However, the investigation has not been completed, thereby preventing the authors from pursuing their claim for compensation.

² Human Rights Committee, General comment No. 6: Article 6 (Right to life), 1982 (HRI/GEN/1/Rev.8), paragraph 1.

³ Communication No.1436/2005, *Sathasivam v. Sri Lanka*, Views adopted on 8 July 2008, paragraph 6.4. See also Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004 (HRI/GEN/1/Rev.8), paragraphs 15 and 18.

⁴ Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004 (HRI/GEN/1/Rev.8), paragraph 18.

9.4 The Committee also notes that in their communication to the Committee and numerous letters to the State party's authorities, the authors attributed their son's arbitrary deprivation of life to the State party's security forces and provided sufficiently substantiated arguments in support of their claim: (a) Eldiyar Umetaliyev's death, attested by the Death Certificate, (b) occurred at the same time and in the same place as the anti-riot security operation conducted by militia officers; (c) the forensic medical report of the Republican Forensic Medical Bureau dated 25 April 2002 does not exclude the possibility that Eldiyar Umetaliyev's fatal wound could have been caused by a bullet from a machine gun or pistol (which, according to the authors, were and are being used exclusively by military personnel). The Committee considers that the severe consequences of the use of firearms *as such* for the exercise of one's right to life warranted at the very minimum a separate investigation of the potential involvement of the State party's security forces in Eldiyar Umetaliyev's death. In addition, the Committee notes, that the State party has not advanced any arguments that it took effective and feasible measures, in compliance with its obligation to protect the right to life under article 6, paragraph 1, to prevent and to refrain from the arbitrary deprivation of life.

9.5 The Committee recalls its jurisprudence⁵ that the burden of proof cannot rest alone on the authors of the communication, especially considering that the authors and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. In addition, the deprivation of life by the authorities of the State is a matter of utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.⁶ The Committee takes into account that the arguments provided by the authors point towards the State party's direct responsibility for Eldiyar Umetaliyev's death through an excessive use of force, and considers that these statements, which the State party has not contested, and which the authors have sufficiently substantiated, warrant the finding that there has been a violation⁷ of article 6, paragraph 1, of the Covenant, with regard to Eldiyar Umetaliyev.

9.6 The Committee further observes that although over six years have elapsed since Eldiyar Umetaliyev's killing, the authors still do not know the exact circumstances surrounding their son's death and the State party's authorities have not indicted, prosecuted or brought to justice anyone in connection with these events. The criminal case remains suspended without any indication from the State party when the case will be completed. The Committee finds that the persistent failure of the State party's authorities properly to investigate the circumstances of Eldiyar Umetaliyev's death effectively denied the authors a remedy. The Committee also notes that the authors' civil claim for compensation from the State party's authorities for their son's death was

⁵ Communication No. 30/1978, *Bleier v. Uruguay*, Views adopted on 24 March 1980, paragraph 13.3, Communication No. 84/1981, *Dermat Berbato et al. v. Uruguay*, Views adopted on 21 October 1982, paragraph 9.6.

⁶ Human Rights Committee, General comment No. 6: Article 6 (Right to life), 1982 (HRI/GEN/1/Rev.8), paragraph 3.

⁷ Communication No. 962/2001, *Mulezi v. Democratic Republic of the Congo*, Views adopted on 8 July 2004, paragraph 5.4.

suspended until the completion of the criminal case. The Committee concludes that the State party violated the authors' rights under article 2, paragraph 3, read together with article 6, paragraph 1, of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by Kyrgyzstan of Eldiyar Umetaliyev's rights under article 6, paragraph 1, and of the authors' rights under article 2, paragraph 3, read together with article 6, paragraph 1, of the Covenant.

11. Under article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy in the form, *inter alia*, of an impartial investigation in the circumstances of their son's death, prosecution of those responsible and adequate compensation. The State party is also under an obligation to prevent similar violations 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 or not 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 in case a violation has been established, 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 Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
