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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2231/2012*, **

<i>Communication submitted by:</i>	Azimjan Askarov (represented by counsel from the Open Society Justice Initiative)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	12 November 2012 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 21 December 2012 (not issued in document form)
<i>Date of adoption of decision:</i>	31 March 2016
<i>Subject matter:</i>	The author was tortured and denied fair trial procedural guarantees
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture; fair trial; fair trial – legal assistance; arbitrary arrest – detention; conditions of detention; discrimination on the ground of ethnic origin
<i>Articles of the Covenant:</i>	Article 2; article 7, read separately and in conjunction with article 2 (3); article 9 (1); article 10 (1); article 14 (1), (2), (3) (b) and (e) and (5); article 19; and article 26.
<i>Articles of the Optional Protocol:</i>	5 (2) (b)

* Adopted by the Committee at its 116th session (7-31 March 2016).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.



1. The author of the communication is Azimjan Askarov, a national of Kyrgyzstan born in 1951. He claims that the State party has violated his rights under article 2; article 7, read separately and in conjunction with article 2 (3); article 9 (1); article 10(1); article 14 (1), (2), (3) (b) and (e) and (5); article 19; and article 26 of the Covenant. The Optional Protocol entered into force for the State party on 7 January 1995. The author is represented by counsel.

The facts as submitted by the author

2.1 The author, an ethnic Uzbek, is a human rights defender in Kyrgyzstan. For more than 10 years he has documented human rights violations by the police and prison authorities in his home town, Bazar-Korgon, and other parts of the Zhalal-Abad region. On 15 June 2010, he was detained in the aftermath of ethnic violence in southern Kyrgyzstan. He was accused of numerous crimes, including complicity in the murder of a police officer on the morning of 13 June 2010, and was detained at the same police station where the police officer in question had worked.

2.2 The author claims that during his first four days of detention at the police station following his apprehension on 15 June 2010 he was repeatedly beaten; the police humiliated him and, referring to his human rights work, made such statements as “because of the articles criticizing us, we will get even with you”, “we will make you die slowly”, “now we have the opportunity and the time to punish you” and “now it is your turn to serve us”. He was denied access to a lawyer and was interrogated at least 11 times as the police attempted to coerce him into testifying against leaders of the Uzbek community in Kyrgyzstan.

2.3 The author submits that at one point, he was repeatedly hit on the head with a pistol and forced to clean up his own blood. The police also threatened to have his wife and daughter raped in front of him. His detention was not registered for nearly 24 hours, even though article 95 of the Criminal Procedure Code of Kyrgyzstan requires registration within three hours of detention. On the third day of interrogation, the local prosecutor in charge of the investigation, Ms. Turazhanova, criticized the police for the fact that they still had not obtained the information that she said she needed.

2.4 The author submits that on 17 June 2010, the prosecutor filed criminal charges against him, alleging that he had instigated ethnic hatred, incited disorder and incited the crowd to attack the police officer who died as a result of the attack. The court ordered the author’s pretrial detention at a hearing at which both the judge and prosecutor declared that his guilt was already proven. The author was provided a State-appointed lawyer, Mr. Myrzakulov, but the lawyer did not defend the author’s interests; to the contrary, he accused the author of having been disrespectful to the police and the prosecutor in the past by writing articles criticizing their work. Ultimately, seven other co-defendants from Bazar-Korgon were also detained and charged with participating in the disorder, the death of the police officer, or both.

2.5 The author was detained by the police in the deceased officer’s police station in Bazar-Korgon for two months. He had no access to a lawyer until a colleague visited him a week after his detention and discovered that he was being tortured. Even when a prominent human rights lawyer from Bishkek, N. Toktakunov, joined the defence team, the police and the prosecutor refused to allow him to meet the author in private and withheld information necessary to prepare for his defence. On several occasions,¹ relatives of the dead police

¹ The author submits that his lawyer was first attacked on 23 June 2010, when the relatives of the deceased police officer threatened him with violence if he continued to defend Mr. Askarov.

officer physically attacked the author's lawyer on the premises of the police station and at the prosecutor's office while the police and local prosecutors refused to intervene. The police terminated one of the lawyer's only private meetings with the author after 10 minutes; throughout the entirety of the two-month-long investigation, they had less than two hours together to discuss the case.

2.6 The author claims that he was tried along with seven co-defendants in the district court, beginning on 2 September 2010. The trial was flagrantly unfair and amounted to a denial of justice. The author's lawyer was not able to participate in the first day of the trial because he had been notified of the hearing only the night before and he lived in Bishkek, a 10-hour drive away. The author pleaded not guilty to all charges, as he had been at home when the policeman was killed, but the court did not permit his lawyers to present evidence in his favour. In the absence of the author's lawyer on the first day of the trial, the court heard 16 prosecution witnesses, including 14 police officers from the Bazar-Korgon police station.

2.7 The author submits that relatives of the deceased police officer constantly threatened and intimidated the author's defence team, his seven co-defendants and potential witnesses inside and outside the courtroom. The relatives stated, for example, that they had "hired killers for every defence lawyer" participating in the hearings. The presiding judge made no effort to protect defence counsel or maintain order in the courtroom. The atmosphere of intimidation in the courtroom prevented defence counsel from making legal applications, calling witnesses for the defence or cross-examining prosecution witnesses.

2.8 The author and his co-defendants were also beaten during the trial. After the first hearing, police opened the cage in which they were held and beat them right in the courtroom. Later that evening, 20 police officers beat the author and the other defendants, who were handcuffed and unable to protect themselves, for several hours in the backyard of the police station where they were held during the trial. While beating them, the officers told them they must remain quiet and give only "yes" or "no" answers in the courtroom.

2.9 Without considering any evidence presented by the defence, the district court held the last hearing on 8 September 2010. During the hearing, the lawyer, Mr. Toktakunov, reiterated that the author had been tortured. He also complained about the lack of adequate access to his client and to the criminal case file. On 15 September, the district court found the author guilty of instigating ethnic hatred, inciting disorder and complicity in the murder of the police officer as well as attempted murder of other officers, calling for the mayor to be taken hostage and possession of 10 rounds of ammunition. The court sentenced him to life imprisonment. It also convicted all seven of his co-defendants, sentencing four to life imprisonment and the other three to prison terms of between 9 and 20 years.

2.10 Lawyers for the author and his co-defendants appealed the convictions to the Zhalal-Abad Regional Court and on 9 October 2010, the author and his co-defendants were transferred to Suzak police station in preparation for the appeal hearings. On arrival at the station, they were taken to the backyard, forced to remove their clothing and beaten by police officers wearing black masks who told the author: "If you had not written against the police ... we would not be beating you."

2.11 On 23 October 2010, the hearing was transferred to the courthouse in Tash-Kumyr village. Upon arrival at the police station there, the author's medication was confiscated and his co-defendants were again stripped and beaten by masked police officers. After one day of hearings in Tash-Kumyr, the venue was again changed, to the courthouse in Nookan village. The appeal hearings before the Zhalal-Abad Regional Court in both Tash-Kumyr and Nookan were characterized by violations similar to those that had occurred at the trial. In addition, relatives of the deceased officer shouted at and threatened the defence lawyers during the hearings.

2.12 The author submits that the relatives also threatened potential defence witnesses, and even the police advised potential witnesses not to attend the hearing. As a result, the defence lawyers were again unable to call and examine witnesses. On 10 November 2010, the appeal court rejected the appeals and upheld the sentences of the trial court. The author was moved on 11 November to Zhalal-Abad police detention centre where he was kicked in the chest and further humiliated by being stripped and called derogatory names. By the time he was finally transferred out of police custody to a prison in Bishkek on 12 November, his health had severely deteriorated.

2.13 Lawyers for the author and his co-defendants appealed to the Supreme Court and for the first time were able to file the witness statements that substantiated the author's version of events and could establish his innocence. They included 14 witness statements to the effect that the author was at home on the morning the policeman was killed. Although the hearing of the case at the Supreme Court was relatively safe, that is, not dominated by relatives and supporters of the deceased police officer, the author was not allowed to attend. Despite having accepted the applications of the defence and the witness statements, the Supreme Court apparently did not take this evidence into account.

2.14 In its written decision of 20 December 2011, the Supreme Court did not refer to the new witness statements, summarily dismissed other defence arguments as not corresponding to the content of the case file and declined to order an investigation into the torture allegations. It upheld the verdict and sentence against the author and six of his co-defendants (the Court overturned the conviction on one charge against the seventh co-defendant and reduced her sentence from 20 years' imprisonment to 11 years).

2.15 In December 2011 and February 2012, a renowned medical specialist based in the United States of America, Dr. Sondra Crosby, examined the author in the prison in Bishkek at the request of the Open Society Justice Initiative and Physicians for Human Rights. In her report, the expert confirmed that the author appeared to have suffered severe and lasting physical injuries as a result of his arrest and incarceration, and that his injuries supported his account of torture while in police custody. At the time of Dr. Crosby's examination, the author needed immediate medical assistance for persistent visual loss, traumatic brain injury and spinal injury. In addition, he required immediate evaluation for his chest pain and shortness of breath, symptoms strongly suggestive of coronary artery disease, which could be life-threatening if not treated immediately. None of the tests or treatment has been provided to date.

2.16 The author has exhausted all available domestic remedies. During his trial and after his conviction, his lawyer repeatedly complained of torture before the Bazar-Korgon District Court, the appeal court and the Supreme Court. He also filed several requests with the prosecutor's office to investigate his allegations of torture; the author furthermore complained of torture to the Office of the Ombudsman of the Kyrgyz Republic.

2.17 Despite these requests, no criminal investigation took place. In denying the requests to investigate, the authorities repeatedly referred to two statements made by the author while in police custody that he had no complaints — statements made as a result of threats of further torture. The prosecutors have continued to ignore all the evidence provided by the author and his lawyer about the torture that the author endured, including multiple detailed and consistent accounts of his mistreatment set out in legal documents, statements, details provided to the Ombudsman, interviews with media and non-governmental organizations and medical records, including the two evaluations by the foreign medical specialist.

The complaint

3.1 The author claims that the treatment inflicted upon him by police officers in detention, motivated by the desire to obtain a false confession, to discriminate against him

on the grounds of his ethnic origin and to punish him for reporting police abuse, amounts to torture in violation of article 7 of the Covenant. The torture was exacerbated by the conditions in which the author was detained and the failure to provide him with medical treatment, in further violation of article 7.

3.2 The State party's failure to take measures to protect the author from torture and its failure to conduct an impartial, effective and thorough investigation into the repeated torture of the author and to provide access to effective remedies, including compensation and rehabilitation, amount to a violation of article 7, read separately and in conjunction with article 2 (3) of the Covenant.

3.3 The author's detention was not in accordance with domestic law, had no legitimate purpose, and was motivated by his role as a human rights defender and by his ethnicity. It was therefore unlawful and arbitrary, in violation of article 9 and prohibited under articles 2 and 26 of the Covenant.

3.4 The conditions in which the author was detained, in particular at the Bazar-Korgon police station, were inhuman, in violation of article 10 of the Covenant.

3.5 Furthermore, the author was denied adequate time and facilities to prepare for his defence, in particular the possibility of communicating with his counsel, and public officials violated the presumption of innocence by openly calling him guilty. The lack of independence and impartiality in the author's trial and subsequent appeal process and the atmosphere of intimidation both at trial and on appeal violated his right to a fair hearing. He was unable to effectively call or cross-examine witnesses and was not present at the first potentially meaningful review of his conviction by the Supreme Court, all in violation of article 14 of the Covenant.

3.6 Finally, the author considers that the authorities detained and tortured him and denied him a fair trial in large part because of his work as a human rights defender in Kyrgyzstan, in violation of articles 9 and 19 of the Covenant.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 28 June 2013, the State party submits that on the basis of the complaint submitted to the Committee, it had created a special investigative group consisting of five prosecutors, which was tasked with investigating the author's claims.

4.2 The State party explains that on 12 June 2010, at around 4 p.m., a large group of ethnic Uzbeks gathered at the border between Kyrgyzstan and Uzbekistan. The *akim* (mayor) of the Bazar-Korgon district arrived, tried to calm the situation and asked the people to return to their homes. Several people, including the author, urged the group to take the *akim* hostage and cross into Uzbekistan. Later that day, the same people hurled insults at ethnic Kyrgyz people and called for active disobedience and armed resistance.

4.3 On 13 June 2010, a group of 400-500 persons of Uzbek ethnicity blocked the Bishkek-Osh highway. The group was armed with guns, knives, metal rods and wooden sticks. A group of police officers from the Bazar-Korgon police district was sent to talk to the crowd. The officers were not armed, having left their pistols at the police station.

4.4 The author and others incited the angry mob to attack the police officers. As a result, 13 police officers² were injured and one officer, M. Suleimanov, was killed and his body burned. On the basis of these facts, the prosecutor of the Bazar-Korgon district initiated a criminal investigation. As several witnesses named the author as a perpetrator of the crime,

² The State party provides the names of all the injured police officers.

on 15 June 2010 he was brought to the prosecutor for questioning as a witness. His house was searched, and the police officers found 10 ammunition cartridges for a pistol and other items.

4.5 On 16 June 2010, the author was detained as a suspect, in the presence of a lawyer, Mr. Myrzakulov. On 17 June, the author was charged with committing several crimes, specifically under article 233, paragraphs 2 and 3, and article 299, paragraph 2, subparagraphs 1 and 3, of the Criminal Code of Kyrgyzstan.³ The same day, the Bazar-Korgon District Court ordered the author's detention.^{4,5}

4.6 The State party submits that the Bazar-Korgon District Court found the author guilty and sentenced him to life imprisonment.⁶ Seven other co-defendants were sentenced to various terms of imprisonment. The author appealed the decision, which was upheld first by the Zhalal-Abad Regional Court on 10 November 2010.

4.7 On 23 November 2010, the author appealed the decision to the Supreme Court. Except for minor changes that concerned the author's co-defendants, the decision of the lower court was upheld.

4.8 As is evident from the court verdict, the author is charged with complicity to kill a law enforcement officer. He did not kill the officer himself, but he directed others to do so. This evidence was revealed in the court testimonies of nine police officers.⁷ Numerous other law enforcement officers testified that the author was present at the same time and location as the angry mob when the police officer was killed.⁸

4.9 The State party further submits that the author's claims regarding torture and ill-treatment are not supported by evidence. The police investigator, B. Karimov, in his testimony on 14 May 2013, reported that he was able to locate the author on 15 or 16 June 2010 and asked him to proceed to the police station. After the author was brought to the police station, the investigator did not participate in the questioning, but reported that no physical violence was used.

4.10 Another police officer, A. Oskonbaev, also participated in bringing the author to the police station. He then questioned the author for about 10 minutes, and did not witness any violence. Afterwards, the author was questioned as a witness by the deputy prosecutor, Z.

³ Article 233 - Organization of mass riots attended by violence, pogroms, arson, the destruction of property, the use of firearms, explosives, or explosive devices, and also armed resistance to government representatives. Article 299 - Actions aimed at the incitement of national, racial, or religious enmity, abasement of human dignity, and propaganda for the exceptionality, superiority, or inferiority of individuals by virtue of their belonging to a religious, national, or racial group,

⁴ From 16 June to 27 July 2010, the authorities also detained and charged several other defendants. Several other suspects were able to avoid arrest and were charged in absentia.

⁵ This decision was appealed, but the Zhalal-Abad Regional Court and the Supreme Court upheld the decision.

⁶ The author was found guilty of committing several crimes under the Criminal Code of Kyrgyzstan. His final sentence was calculated by combining several sentences. The most serious charge, punishable by life imprisonment, was under articles 30 and 340 of the Criminal Code: complicity to kill a law enforcement officer.

⁷ Several of the police officers testified that they heard the author hurling insults at ethnic Kyrgyz people.

⁸ The State party submitted extensive reports regarding testimonies by various law enforcement officers and other witnesses. All the reports support the author's conviction. The reports further attempt to show that the investigation into the circumstances of the events was conducted without bias against the author based on his activity as a human rights defender or his Uzbek ethnicity.

Turazhanova.⁹ On 16 June 2010, the author was detained in the presence of a lawyer, P. Myrzakulov.

4.11 On 17 June 2010, in accordance with the decision of Ms. Turazhanova, who was the head of the investigation team at the time, the author underwent a medical examination. The results of the examination were issued on 24 June. It revealed bruises to the author's right cheekbone, both right and left shoulder and on the back. No other injuries were detected. During the examination, the author said that he had been hit by someone in his cell, not by police officers. On 17 June, during an interrogation, the author stated that he had not been mistreated by police officers; that statement was officially recorded in the minutes of the interrogation.

4.12 On 22 June 2010, the author's lawyer, N. Toktakunov, filed a complaint with the district prosecutor, whom he asked to investigate the bruises on the author's body and the denial of a confidential meeting with his client. On 23 June, Ms. Turazhanova questioned the author again regarding his bruises. He again stated that he had been attacked by an unknown person in his detention cell.

4.13 It was also ascertained that at the time of his initial detention, two other persons were also present in his cell: M.M. and S. M. The former attacked the author, blaming him for the burning of his house. The author refused to pursue charges against M.M. Moreover, it was impossible to transfer the author to another detention facility in the city of Osh, as Osh is 140 km away from Bazar-Korgon.

4.14 The State party adds that the author further complained to the Prosecutor General of the Kyrgyz Republic regarding torture and ill-treatment.¹⁰ After considering the complaint, the prosecutor responded by saying that the request had already been rejected twice. This decision was appealed to the Pervomaisk District Court in Bishkek. The court found that the prosecutor's decision was not in line with the requirements of law.

4.15 The complaint was sent to the Zhalal-Abad Regional Prosecutor's Office, where a prosecutor, Mr. Toitonov, again rejected the author's complaint. He found that the author had been attacked by M.M. and not by law enforcement officers.

4.16 Furthermore, on 26 October 2010, the author was examined by a doctor of the Centre for Family Care of the Bazar-Korgon district. She later testified that the author had complained about a cough and stomach pain. She did not witness any bodily injuries.

4.17 On 26 June 2010, the author was also examined by Dr. Dzholdoshev, who detected bruises on the author's back. The bruises had already been examined, and the prosecutor did not initiate a criminal investigation.

4.18 Counsel for the author, Mr. Toktakunov, claims that on 23 June 2010, he was given only three or five minutes to meet with his client. This is erroneous, as the lawyer was not limited in his ability to speak with the author. On the day in question, the lawyer met with his clients for about 20 minutes in a separate room, and afterwards declared that the meeting was over.

4.19 Mr. Torogulov, who was the head of the Bazar-Korgon detention centre, also testified that counsel had had unlimited time with his client and that the author had not been subjected to any torture or mistreatment.¹¹

⁹ This relates to the author's first interrogation as a witness on 15 June 2010.

¹⁰ The date of this complaint is not provided.

¹¹ All of these testimonies were given in response to questioning by the special investigative group of five prosecutors that the State party mentions in paragraph 4.1.

4.20 The State party refers to Mr. Toktakunov's complaint that on an unspecified date, when he planned to visit the author in the detention centre, he was surrounded by several angry relatives of the deceased police officer, who insulted him, called him a traitor and threatened to kill him. The State party submits that at the time, Mr. Toktakunov did not register any complaints regarding the alleged attacks with the Bazar-Korgon district police.

4.21 Regarding the first lawyer who was present at the author's detention, the State party submits that Mr. Myrzakulov defended his client to the best of his abilities. The author's claim that he was acting in the interests of the authorities were not confirmed. At some point, Mr. Myrzakulov was visited by several human rights defenders and lawyers, who took his case file for the author, after which Mr. Myrzakulov stopped representing the author.

4.22 The State party was also able to question several people who were also detained at the time of the author's detention in Bazar-Korgon. None of them witnessed any torture or beatings, as the author alleges.

4.23 The State party further denies that the author did not receive proper medical care while he was in the detention centre. At least two doctors testified that while the author complained about stomach pains and some bruises, there was no proof that he had been tortured. On 28 June 2010, the prosecutor, Mr. Berdibaev, decided not to initiate a criminal case on the basis of author's complaints.

4.24 The State party further denies that the author's cell was overcrowded. The author claims that his cell measured 2 metres by 3.5 metres and held, at various times, between 7 and 12 other detainees. The records of the detention centre show that, at most, there were 9 detainees in the cell between 28 and 31 July, on 31 August and on 1 and 2 September 2010.¹² The author's complaints about the cell's temperature and water and food supply have not been confirmed; all the detainees received hot meals and hot tea.

4.25 On 24 June 2010, the author was transferred to the Zhalal-Abad Regional Court for consideration of his complaint regarding the conditions of his detention and his request to be released pending trial. While the author complains that at the regional court he was again insulted and threatened by relatives of the deceased police officer, the incident could not be confirmed. The author claims that at the Zhalal-Abad detention centre 16 persons were held in a cell intended for 8. The records of the detention centre, however, show that only 9 people were detained at that time.

4.26 On 2 September 2010, the author was transferred to the Nookan District Court. This was done to ensure the security of defendants and other participants in the hearing. Because of the security concerns, the author and his co-defendants were provided additional police officers for protection during their transportation. Only later was it revealed that some of the police officers in the convoy were also victims of the events related to the author's charges. This was explained by a lack of sufficient numbers of police officers in the Nookan district police.

4.27 The State party further contends that the author's claims that he was attacked and insulted in the Nookan District Court were not confirmed. Heightened security measures were employed during the hearings. If some participants shouted during the court hearings, they were immediately stopped by the presiding judge.

4.28 Regarding the author's request for additional witnesses, the records of the hearings do not show that the defendant or his lawyers made any motions to call additional witnesses. On 7 September 2010, the lawyer, Mr. Toktakunov, requested the court to

¹² The State party submits that at other times, the number of detainees was lower.

question two witnesses, A.A. and I.I. The court denied the request, stating that the witnesses had no connection to the events in question.

4.29 Regarding torture and mistreatment of the author while he was in detention in Nookan, the State party notes that the allegations were not confirmed during the subsequent investigation in 2013. Several police officers who were present at the relevant time in the detention facility were questioned; they stated that they had not witnessed any torture or mistreatment.

4.30 The State party also contends that while Mr. Toktakunov had filed a complaint on 6 September 2010 regarding the bruise under the author's left eye, the author himself wrote a letter to the authorities claiming that he accidentally bumped into the head of a cellmate who was handcuffed, which allegedly caused the bruise. The author refused a medical examination.

4.31 On 14 October 2010, the author was transferred to the Suzak district detention centre. His claim that he was beaten in the backyard of the detention centre was not confirmed by the testimonies of police officers who were present at the time in question. Regarding the overcrowding of the cell (six beds for 12 detainees), the State party submits that that was a result of the "June events", and that the author always had a separate bed. The death threats made by the mother of the deceased police officer could not be verified, as she had died in 2013.

4.32 From 23 October to 4 November 2010, the author was detained in the Tash-Kumyr city detention centre to enable him to participate in his appeal hearings. Several police officers were questioned in relation to the author's claims regarding torture, beatings, insults and other forms of mistreatment. All the police officers denied having witnessed any form of mistreatment or having participated in torturing the author. Furthermore, a medical examination conducted on 5 November did not reveal any injuries to the author.

4.33 On 10 November 2010, the author and his co-defendants were brought to the Zhalal-Abad city detention centre. The State party denies the claim that the chief of the detention centre, Y. Kerimkulov, ordered that the author be beaten.

4.34 On 12 November 2010, the author was taken from Tash-Kumyr detention facility to Bishkek. En route, he was detained in Toktogul settlement-colony No. 52. There, contrary to the author's allegations, he was provided with all the necessary items to spend the night, such as a mattress and a blanket.

4.35 Regarding the author's participation in the appeal hearings at the Supreme Court, the State party submits that on 26 January 2011, the author's counsel requested that the author himself be allowed to participate in the hearings. According to articles 374 and 378 of the Criminal Procedure Code of Kyrgyzstan, the participation of convicted persons in appeal hearings is at the discretion of the court.¹³ In the present instance, the court decided to hear the author's case without the author being present.

4.36 The State party further submits that the author's claims regarding inadequate access to medical facilities were discredited by several doctors and other witnesses. On 13 November 2010, the author was admitted to the Central Hospital of the penitentiary system. The initial examination of the author showed that his condition was "relatively satisfactory". The author complained about his health and was treated and released on 25 November.

¹³ It is not clear whether the State party refers to the cassation appeal or to the supervisory proceedings.

4.37 The State party concludes that, in general, none of the author's claims of beatings and torture were confirmed. The author's interest in pursuing these claims is to relieve himself of criminal responsibility. Three psychiatrists examined the author and concluded that he was "a liar; an obsequious person" and that the author used lies to mislead international organizations. The author further claims that his criminal prosecution was motivated by revenge on the part of the law enforcement agencies for his alleged role in the killing of the police officer.

4.38 The fact that the author tells lies is confirmed by the testimonies of more than 100 witnesses, among them many law enforcement officers, members of the judiciary, employees of the penitentiary systems, doctors and others. It has been shown that the author received proper medical care when it was necessary.

Author's comments on the State party's observations

5.1 Commenting on the State party's observations, the author submits that the State party's submission fails to address his claims. The State party focuses on interviewing police officers and prosecution and court officials, without even questioning the author or his representatives. It is not surprising that the State party concludes in its report that the author's allegations were not confirmed.

5.2 At the same time, the State party attempts to impugn the author by attacking and discrediting his work as a human rights defender, denying that the alleged violations ever occurred and calling the author "a liar".

5.3 The State party does not address the author's claims, but instead challenges the witness statements that were included in the communication. The State party also ignores the medical evidence produced by an independent expert, and instead relies only on the State-sponsored medical examination, which was rejected by independent medical experts as being "incompetent" or "misleading".

5.4 The State party's response takes at face value testimonies and statements made by government officials involved in the author's torture, while dismissing the author's account as untrue. The author has provided a compelling and consistent account of his ill-treatment. For example, in late June 2010, the author gave three visiting employees of the Office of the Ombudsman a written statement regarding the beatings that he had suffered, and he spoke to the Ombudsman by phone. The State party disregards this pattern of consistency and, moreover, never interviewed the Ombudsman as part of its investigation.

5.5 The State party fails to consider that the statements made by the author to the authorities that he was not tortured were made under extreme duress. The statements were made in response to further threats of torture and threats of abuse against others. The communication describes at least four separate incidents where the author showed visible signs of "extensive physical injuries" in the presence of officials, who had an obligation to investigate and determine their origin.

5.6 On 16 June 2010, the State party issued a press release stating that the author had no injuries. However, the next day, the author had visible bruises on his face and back. On 22 June, Mr. Toktakunov took photographs of the author's heavily bruised back and showed the photographs to the prosecutor in charge of the case. Shortly after the first day of the author's trial, 2 September 2010, he was visited by A. Abdirasulova, head of the human rights organization Kylym Shamy, and by the Deputy Minister of the Interior, Mr. Alymbekov. Mr. Abdirasulova saw bruises on the author's face. On 6 September, the author appeared in court with a visible bruise under his left eye.

5.7 The author reiterates that he was arbitrarily detained, without registration, for almost 24 hours on 15 June 2010. The State party claims that the author was initially questioned as

a witness but in fact he was detained as a suspect. He was formally arrested on 16 June 2010 in the presence of an appointed lawyer.

5.8 The communication also describes numerous conditions that led to a flagrantly unfair trial, including ongoing torture of the author, intimidation, threats and violence against the defence lawyers and witnesses and the court's failure to secure the courtroom. The State party chooses to ignore evidence of witness intimidation and instead relies on statements from the court officials who allowed this situation to occur.

5.9 The State party further fails to provide a plausible response to important corroborating testimony from the author's brother, who was detained with him on the night of 15 June 2010. Both were detained without any charges and were repeatedly beaten.

5.10 The author has provided extensive reports from the civil society and independent trial monitors who suggested during the trial that he had been ill-treated. The International Commission of Jurists provides a detailed description of the author's arrest, detention and torture and describes the degree of courtroom harassment and intimidation of defence lawyers and defence witnesses. The State party instead relies on statements from prosecutors and judges.

5.11 The State party further ignored affidavits submitted by Dr. Crosby, which show clear and compelling evidence that the author suffered severe and lasting injuries as a result of his arrest and incarceration. The expert finds that the symptoms suffered by the author to be "highly consistent" with a traumatic brain injury, and that the author's description of blunt force trauma to the chest is consistent with the X-rays that revealed fractured ribs.

5.12 The State party confirms the overcrowding in the Zhalal-Abad detention centre. The State party also confirms that the author was detained at the temporary detention centre at the Bazar-Korgon police station, in violation of the domestic law. While denying that there had been violence in the courtroom, including threats and attacks against the defendants, lawyers and witnesses, the State party confirms that the hearings were moved to Nookan to ensure the security of the defendants and other participants in the trial. One of the convoys transporting the defendants included police officers from Bazar-Korgon district who were recognized as victims themselves.

5.13 The officials designated by the State party to undertake the new investigation in response to the author's communication addressed to the Committee did not seek to interview any of the witnesses for the defence. The only person interviewed who was nominally associated with the author was the lawyer, Mr. Myrzakulov. The investigators failed to interview the two lawyers who actually represented the author during the trial, Mr. Toktakunov and Mr. Abylakimov.

5.14 The author further contends that since the State party's investigation failed, there is a need for an independent commission of inquiry to remedy the violations of the Covenant. According to the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles), investigations shall be undertaken through an "independent commission of inquiry or similar procedure".¹⁴ The composition of the commission must ensure the independence of the members.

5.15 The author further requests that the Committee consider his case urgently. His health as well as his life are at great risk, as he suffers from coronary artery disease and other

¹⁴ The author refers to the publication entitled *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, to which the principles are annexed.

serious conditions. During his detention, he suffered repeated beatings, which resulted in an array of brain, visual and hearing injuries. The author is also in poor psychological condition. Despite these continuing health issues, the State party refuses to provide critical medication, tests or treatment. The prison doctors have not even provided the necessary tests to determine the appropriate treatment.

State party's additional observations

6.1 In a communication dated 11 June 2014, the State party submits that the investigation into the author's claims had been impartial and complete. More than 100 witnesses who were questioned in the process confirmed that the author's claims regarding beatings, torture and other mistreatment were unfounded.

6.2 The State party submits that the author was indeed questioned on 15 June 2010, from 4.45 p.m. until 7.15 p.m. On 16 June, at 9 a.m., he was officially arrested as a suspect. The investigation could not ascertain the author's whereabouts after his initial questioning on 15 June until his arrest on 16 June. The decision of the Bazar-Korgon District Court regarding the author's detention was issued on 17 June, at 6.30 p.m. Therefore, even if the author's claims were true, his detention was formalized within 48 hours.

6.3 The trial of the author at all three instances was carried out in strict compliance with the requirements of the criminal procedure of the State party. All defendants, including the author, were assisted by qualified defence lawyers. The author was defended by two lawyers, Mr. Toktakunov and Mr. Abylakimov. The lawyers had the same rights as the prosecution, including the right to call additional witnesses. As is evident from the investigation records and the trial transcripts, the lawyers did not request that additional witnesses be called.

6.4 On 7 September 2010, one of the lawyers, Mr. Toktakunov, orally requested the court to request the presence of two witnesses, A.A. and I.I. However, as was explained to the lawyer, it was up to the defence to secure the presence of additional witnesses. The lawyer's request was therefore denied.¹⁵

6.5 The author seems to challenge the veracity of the statements made by the prosecutors and court officials. The prosecutor's office is independent of the police force. According to the law, the court is the only body that admits evidence, and makes impartial decisions based on that evidence. On the other hand, the evidence presented by lawyers to the Committee was never presented during the investigation or at the trial. Since the witnesses who gave this evidence are either relatives or neighbours of Mr. Askarov, the veracity of their statements raises doubts.

6.6 For example, the statement by the author's brother that he was detained together with the author, was beaten up and tortured was not confirmed when he was examined by a prosecutor of the Zhalal-Abad prosecutor's office. The records of the detention centre show that the author's brother was not present in the detention centre. The head of the detention centre at that time, K.T., confirmed that the author's brother was not detained at the time in question.

6.7 The author seems to discredit the findings of doctors at the Central Hospital of the penitentiary system and to trust only the conclusions of Dr. Crosby. Upon registration at the hospital, the author was thoroughly examined. The X-ray that was conducted on 19 November 2010 showed broken ribs, but the date of the injury could not be determined. On

¹⁵ The investigative group questioned one of the witnesses, I.I., in 2013. The witness stated that he was not familiar with the author.

17 November 2011, the author underwent echo- and electrocardiograms and was examined by a cardiologist. Those tests identified no “pathological changes”.

6.8 Regarding the headaches experienced by the author, the doctors conducted an echoencephalography examination and did not find any issues. The same is true for a visual test conducted on 31 October 2011 and 14 October 2012. Therefore, the author’s conditions were examined by several doctors but no pathological changes were identified.

6.9 The State party reiterates its position that it provided all the necessary security measures for the court hearings. The victims and relatives of the deceased police officer were warned about keeping order in the courtroom. The State party further confirms that it collected a vast body of evidence that proved the author’s guilt, including statements by nine police officers who witnessed the author’s calls to kill the officer. Additional law enforcement officers — eight in total — testified that they had observed the author at the scene of the killing of the police officer.

6.10 The State party further denies that the author was tortured or beaten while in detention. That there was no ill-treatment is confirmed not only by police officers, but also by his relatives and the human rights defenders who visited the author. Furthermore, while in detention, the author did not request any medical assistance. Regarding a bruise under his left eye, the author himself submitted a letter to the judge on 2 September 2010 stating that he had accidentally bumped into a cellmate’s head.

6.11 Additional claims by Ms. Abdirasulova that she saw signs of torture on the author also raise doubts. Ms. Abdirasulova did not file any complaints at the time, and submitted her report only with the present communication to the Committee. The State party argues that it did in fact question the author, on 10 July and 18 July 2013, with the participation of the author’s lawyer, Mr. Vakhitov.

6.12 The State party submits that on 5 February 2014, the Deputy Prosecutor General of Kyrgyzstan refused to continue the investigation because of newly discovered evidence. The decision was appealed by Mr. Vakhitov to the Oktyabrsk District Court in Bishkek. In his appeal, the lawyer asked the court to order the Prosecutor General to continue the investigation. The State party therefore concludes that the author has not yet exhausted all available domestic remedies.

6.13 The State party further reiterates its position that the author and his lawyers were provided with all the necessary facilities in preparation for the trial and that the court and police officers provided the necessary security measures. Furthermore, upon the author’s conviction, he was provided with all the necessary medical assistance and treatment.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 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.

7.3 The Committee notes that the State party claims that the author failed to exhaust all available domestic remedies as, at the time of the State party’s most recent submission, the author’s appeal to the Oktyabrsk District Court was still pending. The Committee notes, however, that the latest appeal concerns the refusal by the Office of the Prosecutor General to continue the investigation on the basis of newly discovered evidence or circumstances. It

does not concern the claims of the author regarding alleged violations by the State party of the author's rights under several articles of the Covenant. Regarding these claims, the Committee notes that the author has successfully exhausted all available domestic remedies, including the supervisory appeal filed with the Supreme Court of Kyrgyzstan on 22 November 2010.¹⁶ On 20 December, the Supreme Court upheld the verdict handed down by the lower courts. Accordingly, the Committee concludes that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the communication.

7.4 Regarding the author's claims under article 14 (1), (2) and (5) of the Covenant, the Committee notes that the author has failed to provide any elements to demonstrate that the State party violated his right to a fair trial, presumption of innocence and right to appeal. In the absence of additional pertinent information on file, the Committee concludes that the author's claims under article 14 (1), (2) and (5) of the Covenant have not been sufficiently substantiated. Accordingly, it declares that part of the communication inadmissible under article 2 of the Optional Protocol.

7.5 As to the alleged violation of the author's rights under articles 2, 19 and 26 of the Covenant, the Committee considers that the author has failed to provide sufficient information and factual support, and therefore has failed to substantiate his claims that he was persecuted because of his activities as a human rights defender or his Uzbek ethnicity. In the circumstances, and in the absence of any further pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate these claims for the purposes of admissibility and declares that part of the communication inadmissible under article 2 of the Optional Protocol.

7.6 The Committee considers that the author has sufficiently substantiated his claims under article 7, read separately and in conjunction with article 2 (3), and articles 9 (1), 10 (1) and 14 (3) (b) and (e) of the Covenant for the purposes of admissibility, and therefore proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee first takes into consideration the author's allegations that he was, on a number of occasions, tortured and otherwise mistreated. The Committee notes that the findings of the medical forensic examinations conducted by independent experts are consistent with other evidence suggesting that the author was subjected to acts of torture. The Committee also notes that the State party, having questioned more than 100 witnesses (most of them police officers, court officials or prosecutors), concludes simply that the author's allegations "have not been confirmed". The Committee further notes that the author was held at the same police station in Bazar-Korgon where the deceased police officer had worked, which increased the risk of ill-treatment, and that no specific security measures were taken to safeguard the author. The Committee considers that, in the circumstances of the present case, and in particular in the light of the State party's inability to explain the visible signs of mistreatment that were witnessed on a number of occasions, due weight should be given to the author's allegations.

8.3 Regarding the State party's obligation to properly investigate the author's torture claims, the Committee recalls its jurisprudence according to which criminal investigation and consequential prosecution are necessary remedies for violations of human rights such

¹⁶ On 27 January 2011, the author filed an addendum to his appeal through his lawyer, Mr. Toktakunov.

as those protected by article 7 of the Covenant.¹⁷ The Committee notes that the material on file does not allow it to conclude that the investigation into the allegations of torture was carried out promptly or effectively or that any suspects were identified, despite a number of incriminatory witness accounts.¹⁸ In the present case, the inquiry that was conducted in 2013, while extensive, lacked the element of impartiality,¹⁹ as although investigators interviewed more than 100 law enforcement officers, judge, court clerks and prosecutors, they failed to interview the author's lawyers, human rights defenders who visited the author in detention and his relatives. The Committee notes the State party's submission that it interviewed the author. However, it did not refer to the results of the interviews, nor did it provide a copy of the record. In the circumstances of the present case, the Committee concludes that the facts before it disclose a violation of the author's rights under article 7 of the Covenant, read separately and in conjunction with article 2 (3).

8.4 The Committee further notes the author's claims under article 9 (1) that he was arbitrarily detained from 15 to 16 June 2010. The author also claims that this was done to enable the police officers to torture him. The State party contends that the author was first questioned only as a witness and formally arrested on 16 June. The Committee recalls its general comment No. 35 (2014) on liberty and security of person 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 categorically denies that it held the author during the night in question, despite numerous witness accounts to the contrary and the fact that his family members were unable to locate him. In the absence of any pertinent 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 author's rights under article 9 (1) of the Covenant were violated.

8.5 The Committee further takes note of the author's contention that the conditions of his detention, particularly at the Bazar-Korgon police station, were inhuman, in violation of article 10 of the Covenant. The author also complains of the conditions of detention following his conviction, including the lack of adequate access to medical care. The Committee notes that the State party is under an obligation to observe certain minimum standards of detention, which include provision of medical care and treatment for sick prisoners, in accordance with rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). It is clear from the author's account, and from the multiple submissions by independent experts on file, that he was not able to receive proper medical treatment for the serious conditions from which he was suffering. In view of the fact the State party itself acknowledged the overcrowding, and taking into account the author's detailed description of his health condition and lack of access to adequate medical care, the Committee concludes that the State party violated the author's rights under article 10 (1) of the Covenant.

8.6 The Committee notes the author's allegations that his trial was characterized by a number of irregularities, such as disorder and violence caused by members of the public attending the trial. The author further claims that he was not able to call witnesses on his behalf, was not able to cross-examine prosecution witnesses on the first day of trial when

¹⁷ See the Committee's general comment No. 20 (1992) on the prohibition of torture and cruel treatment or punishment, para. 14; and its general comment No. 31 (2004) on the nature of the general legal obligations imposed on States parties to the Covenant, para. 18.

¹⁸ The Committee also notes that to explain the author's allegations of ill-treatment, the State party refers to three psychiatrists' conclusion that the author was "a liar; an obsequious person".

¹⁹ See paragraph 5.14.

his counsel was absent, and could not question any witnesses at the Supreme Court hearings. In this connection, the Committee recalls, in accordance with its long-standing jurisprudence, that article 14 of the Covenant guarantees the right of accused persons to call and question witnesses. This guarantee is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.²⁰ The Committee takes note of the State party's contention that the witnesses had no connection to the events in question or that the records of the court hearings contained no mention of counsel's request to call any additional witnesses. The Committee notes, however, that it remains undisputed that the author's counsel was not able to question witnesses on the first day of trial, 2 September 2010, and that the author was not able to call or cross-examine witnesses at the Supreme Court hearing. In these circumstances, and on the basis of the material before it, the Committee concludes that the State party violated the author's rights under article 14 (3) (e) of the Covenant.

8.7 The Committee, lastly, examines the author's claims that his right to have adequate time and facilities for the preparation of his defence were violated. The Committee notes the author's claims that the police and the prosecutor refused to allow him to meet with his lawyer in private and withheld information necessary to prepare for his defence. Furthermore, the author claims that on several occasions, relatives of the deceased police officer physically attacked his lawyer on the premises of the police station and at the prosecutor's office and that the police and local prosecutors failed to intervene, creating a general sense of fear that is incompatible with the proper execution of a defence lawyer's functions. There is also unrefuted evidence that on the first day of trial, 2 September 2010, the author's lawyer was not present at the hearings because he had not been notified in time, while the court heard 16 prosecution witnesses. In the circumstances, the Committee concludes that the facts as submitted reveal a violation of the author's rights under article 14 (3) (b) of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 7, read separately and in conjunction with article 2 (3), and articles 9 (1), 10 (1) and 14 (3) (b) and (e) of the Covenant.

10. 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 immediately release the author; quash the author's conviction and, if necessary, conduct a new trial, in accordance with the principles of fair hearings, presumption of innocence and other procedural safeguards; and provide the author with adequate compensation. The State party is also under an obligation to take steps to prevent similar violations occurring in the future.

11. 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 remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State

²⁰ See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 39.

party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests the State party to publish the Views.
