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Communication No. 2052/2011

Views adopted by the Committee at its 115th session (19 October-6 November 2015)

<i>Submitted by:</i>	Suyunbai Akmatov, on behalf of his deceased son, Turdubek Akmatov (represented by Rupert Skilbeck of the Open Society Justice Initiative and Nurdin Chydyev)
<i>Alleged victim:</i>	Turdubek Akmatov
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	7 April 2011 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 21 April 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	29 October 2015
<i>Subject matter:</i>	The author's son's death after alleged detention and torture
<i>Procedural issue:</i>	Admissibility (exhaustion of domestic remedies)
<i>Substantive issues:</i>	Right to life, torture, torture — prompt and impartial investigation
<i>Articles of the Covenant:</i>	Articles 6 (1) and 7, read separately and in conjunction with article 2 (3)
<i>Articles of the Optional Protocol:</i>	5 (2) (b)



Annex

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights (115th session)

concerning

Communication No. 2052/2011*

Submitted by: Suyunbai Akmatov, on behalf of his deceased son, Turdubek Akmatov (represented by Rupert Skilbeck of the Open Society Justice Initiative and Nurdin Chydyev)

Alleged victim: Turdubek Akmatov

State party: Kyrgyzstan

Date of communication: 7 April 2011 (initial submission)

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

Meeting on 29 October 2015,

Having concluded its consideration of communication No. 2052/2011, submitted to it by Suyunbai Akmatov 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 author of the communication and the State party,

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1. The author is Suyunbai Akmatov, a Kyrgyz national who submits the communication on behalf of his deceased son, Turdubek Akmatov, also a Kyrgyz national, born in 1972 and deceased in 2005. The author claims that his son was a victim of a violation by Kyrgyzstan of his rights under articles 6 (1) and 7, read separately and in conjunction with article 2 (3), of the

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

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 On 3 May 2005, at approximately 9.10 a.m., a policeman later identified as officer N.T., arrived at the Akmatov home. The officer told Turdubek Akmatov that he was being summoned to the police station in the village of Mirza-Aki. Starting at 9.30 a.m. that day, Mr. Akmatov was detained at the police station without being charged for approximately 10 hours. The duration of the detention is confirmed by the initial testimony of the duty officer at the police station, M.E.¹

2.2 The author submits that during the 10 hours that his son was in detention, a group of six police officers questioned him about an alleged theft that had taken place in Mirza-Aki. During the questioning, the victim received a severe beating from the officers, who inflicted blows to his head and body. Officer M.E. witnessed officer N.T. kicking Mr. Akmatov in the kidneys and ribs, and told him to stop the beating. Officer M.E. then left the police station, where he returned at approximately 3 p.m. He again witnessed officer N.T. beating Mr. Akmatov, who collapsed on the floor.²

2.3 Between 5 and 6 p.m., while Turdubek Akmatov was still detained, the author was approached by a man who was later identified as officer Z.T. The officer informed him that his son was at the Mirza-Aki police station giving a deposition regarding a complaint of theft filed against him.

2.4 On the same evening, at approximately 7.30 p.m., Turdubek Akmatov was released, at which point he returned to his family home. He told his family that he had been beaten during an interrogation by six police officers who were led by someone called Z.T. Shortly thereafter, he fell to the ground as blood poured from his mouth, ears and nose. Later that evening, he died.

2.5 On 4 May 2005, the Uzgen inter-district prosecutor's office ordered an autopsy, which was performed that same day. The autopsy revealed numerous bruises, lacerations and abrasions to the head, chest and fingers of Mr. Akmatov. It also revealed serious injuries to the brain, lung, kidneys and spleen. It was specified that the injuries could have been caused by "blunt, hard objects". Those carrying out the examination concluded that the direct cause of death was haemorrhaging beneath the brain tunic and cerebellum tissues and that the injuries were caused by blunt, hard objects "shortly before death".³

¹ The author submits that officer M.E. gave a formal statement to the prosecutor's office on 22 April 2007, in which he confirmed that the victim was present in the police station at approximately 9.30 a.m. on 3 May 2005.

² The author submits that during subsequent questioning by the prosecutor on 21 June 2007, M.E. retracted his original statement. In his new statement, M.E. claimed that he was not at the police station that day. He also stated that he had been "bullied" by the victim's mother, who "scared" him by saying that he had killed her son.

³ The supplemental medical review that was conducted on 23 September 2005, in addition to the previous findings, could not rule out "that he could have received these injuries from falling down the stairs". An exhumation of the body was called for to reach an accurate conclusion. The exhumation was conducted on 2 October 2006. The new medical-forensic examination confirmed the initial findings but also noted that a "fall from a height is not excluded". On 15 June 2007, the Akmatov family requested an independent examination, which was carried out by a top-level forensic medicine expert who was also a professor at

2.6 The author submits that, despite this physical evidence and despite requests by the victim's family for an investigation, the police and prosecution failed to conduct a thorough and impartial criminal investigation. The police went to the family's home on 4 May 2005, led by Z.T., the officer whom the victim claimed orchestrated the beatings, and then waited 21 days before officially launching the investigation. On 6 May 2005, the author petitioned the Uzgen inter-district prosecutor's office and the chief executive of Uzgen district to investigate the death of his son. On 25 May 2005, he complained to the President of Kyrgyzstan, noting that the law enforcement authorities had failed to prosecute and punish those responsible for his son's death despite having "brought this matter to all levels". According to Kyrgyz law, manslaughter investigations shall be completed within two months, but, on 18 July 2005, the investigation period was extended for an additional three months by a decision of a prosecutor.

2.7 On 4 August 2005, the author sent a complaint to the Ministry of Internal Affairs requesting that steps be taken with respect to the police officers believed to have taken part in the torture of his son. On 10 August 2005, the Ministry issued a report responding to the author's complaint and recommending that the investigation against the police officers be closed since "questioning of police personnel at the Mirza-Aki police district established that the beating and infliction of bodily injury on T. Akmatov were impossible", without providing any further reasoning or explanation.

2.8 On 22 August 2005, the Osh regional prosecutor's office extended the investigation period for an additional four months and ordered an additional medical forensic examination. On 23 September 2005, the supplemental conclusions of the medical forensic review confirmed the injuries identified in the first examination, but did not rule out the possibility that the victim had obtained such injuries by falling down the stairs. On 24 September 2005, the Uzgen district prosecutor's office decided to suspend the investigation because it could not identify those responsible.

2.9 On 20 April 2006, the prosecutor's office requested the exhumation of the body and scheduled a medical forensic examination by a commission of experts. On 12 August 2006, the experts agreed that most of the injuries had been caused by blunt, hard objects, but did not exclude the possibility of a fall. On 27 December 2006, the Deputy Prosecutor General rescinded the order to suspend the investigation, extended its period until 19 February 2007 and sent the case to the regional prosecutor's office. Also on 19 February 2007, the head investigator of the prosecutor's office suspended the case for a second time. On 1 March 2007, the lawyer petitioned the chief case investigator to question the officer on duty on 3 May 2005, M.E. The questioning took place on 22 April 2007, which is when M.E. recounted having seen police officers torturing the victim. On 16 May 2007, the investigation was extended until 23 June 2007.

2.10 On 21 June 2007, the investigator from the prosecutor's office again questioned M.E., who retracted his earlier statements. On 23 June 2007, the date of expiration of the latest

the Kyrgyz State Medical Academy. The expert's report, issued on 11 October 2007, pointed to a number of discrepancies between the description of injuries and the diagnosis of the previous examinations. On 12 March 2008, the Osh regional prosecutor's office ordered that all prior forensic medical evidence be reviewed by a commission. That commission confirmed the previous diagnosis of the cause of death, adding that haemorrhaging around the left kidney could have aggravated life-threatening conditions, namely acute kidney failure, which in turn could have greatly contributed to the death. The commission stated clearly that the injuries could not have been caused by the victim's fall from a bench.

extension, the investigation was suspended again. On 15 June 2007, following a petition from the family's lawyer, the prosecutor's office authorized an independent forensic expert to travel to the incident site and review the conclusions of the earlier autopsy and medical forensic examinations. On 11 October 2007, the expert issued his report, which revealed contusions that had been missed in the previous reports and which excluded the possibility of death resulting from a fall.

2.11 On 28 February 2008, the Office of the Prosecutor General again overturned the suspension of the investigation on the basis of those contradictions. On 12 March 2008, the Prosecutor General ordered a fourth medical forensic review, which was conducted by a commission of senior experts on 19 March 2008. In their report, the experts confirmed the latest independent forensic expert's conclusions. In April 2008, the family's lawyer filed a complaint with the Office of the Prosecutor General requesting that criminal charges be brought against certain officers, that those officers be taken into custody and that the criminal case be sent to court for a consideration of the merits. The case was again sent to the Office of the Prosecutor General and then transferred to the Investigation Department of the Ministry of Internal Affairs.

2.12 On 30 August 2008, the Office of the Prosecutor General again ordered that the criminal prosecution of the police officers be discontinued, noting that contradictions between the conclusions of the official medical forensic examinations and those of the expert rendered it impossible "to make a valid and legal ruling in the case". On 17 November 2008, the Prosecutor General again overturned the decision to terminate the criminal case and returned it once again to the prosecutor for further investigation. On 12 January 2009, the local branch of the Investigation Department once again suspended the investigation and, on 25 May 2009, the Office of the Prosecutor General once again overturned the suspension of the investigation and sent the case back to the regional prosecutor's office for further investigation, extending the period by one month. On 8 July 2009, the local prosecuting authorities again suspended the investigation because the perpetrators had not been identified.

2.13 On 4 January 2011, the family's lawyer filed a complaint with the Osh City Court detailing the evidence of the victim's torture, the inconsistencies in the police's version of events and the deficiencies in the investigation. He asked the Court to send the case to trial on its merits. On 11 January 2011, the Court rejected the lawyer's complaint. In addition, it decided that all decisions relating to the investigation would be taken only by investigators and that courts could not interfere. On 20 January 2011, the lawyer appealed to the Osh Regional Court, asking it to overturn the decision of the Osh City Court and to order the investigators to send the case to trial. On 15 February 2011, the Osh Regional Court rejected the appeal for the same reason as the Osh City Court.

2.14 The author submits that during all his efforts to obtain a proper investigation the police attempted to bribe him and intimidate him into dropping his complaints. In particular, on 29 June 2005, when the author met the chief of district police, Z.T., to inquire about the developments in the case, he was attacked by him and his left index finger was bent back and two tendons were torn.

The complaint

3.1 The author claims that police officers arbitrarily deprived his son of his life by inflicting fatal injuries on him while he was detained and kept on police premises. His son was healthy when he entered those premises; when he arrived home right after leaving the police station, he was fatally injured and died of those injuries.

3.2 The author refers to the Committee's recent jurisprudence, according to which "a death in any type of custody should be regarded as prima facie a summary or arbitrary execution", unless that presumption can be rebutted by a "thorough, prompt and impartial investigation".⁴

3.3 He submits that the State party has not provided any plausible alternative explanation or evidence regarding the exact manner in which the victim could have received those fatal injuries. The testimonies of several witnesses strongly indicate that the beatings were administered by police officers and, therefore, the author sets forth that the State party is responsible for the arbitrary deprivation of life of his son, in violation of article 6 (1) of the Covenant.

3.4 Furthermore, the author submits that the treatment inflicted by the police officers during his son's time in the police station amounted to torture, and as such constitutes a violation of article 7 of the Covenant.

3.5 The author also alleges that the State party has failed to provide adequate safeguards to protect the victim's life and to protect him from torture, in violation of articles 6 (1) and 7, read in conjunction with article 2 (3), of the Covenant. The State party has also failed to prevent the unlawful detention by the police of the author's son and failed to provide the victim with access to a lawyer during the detention.

3.6 The author finally submits that the State party has failed to conduct an independent, impartial, thorough, timely and effective investigation, in violation of articles 6 (1) and 7, read in conjunction with article 2 (3), of the Covenant. In failing to conduct such an investigation, the State party has also failed to provide adequate remedy, since it has effectively prohibited the family of the victim from bringing forward civil proceedings for compensation for the harm suffered.

State party's observations on admissibility and the merits

4.1 In its note verbale of 6 September 2011, the State party submits its observations on admissibility and the merits of the complaint. It notes that on 4 May 2005 the police was alerted about the death of Turdubek Akmatov. Investigators from the local police department and prosecutors from Uzgen district were dispatched and an autopsy was ordered.

4.2 The result of the autopsy revealed that Mr. Akmatov had died from haemorrhaging beneath the brain tunic and cerebellum tissues. Several large bruises, abrasions and lacerations were also found on the body, which were caused by blunt force. The autopsy also revealed bleeding of the ear, bruised lips and bruises on the wrist, which could have been caused by blows inflicted by a fist or by a foot in a shoe.

4.3 On 25 May 2005, the investigators of the Uzgen prosecutor's office initiated a criminal investigation into the death of the author's son. That investigation was extended and suspended⁵ several times because it was not possible to identify the alleged perpetrator or perpetrators of the crime. The investigation was last suspended on 8 July 2009.

⁴ The author refers to communication No. 1225/2003, *Eshonov v. Uzbekistan*, Views adopted on 22 July 2010, para. 9.2.

⁵ The suspension was based on article 221, paragraph 1 (3) of the Code of Criminal Procedure of Kyrgyzstan.

4.4 The State party submits that Mr. Akmatov was brought to the police station at 3 p.m. following complaints received from his neighbours that he had stolen the doors of their residence. It also submits that, after carrying out “prophylactic work”⁶ with Mr. Akmatov, who then signed a statement,⁷ the police released him at 7 p.m. and that he arrived home at 9.45 p.m.

4.5 The State party also submits that, during the investigation into the death of Mr. Akmatov, several officers were questioned. They confirmed that Mr. Akmatov had been brought to the police station on 3 May 2005 at 9 a.m.⁸ and that he was released the same day without having been subjected to any beatings while in police custody.

4.6 The State party further submits that additional witnesses — B.B., Y.S. and G.B., among others — testified that on 3 May 2005 they saw Mr. Akmatov leaving the police department without any “visible bodily injuries”.

4.7 The State party points out that the authorities questioned more than 60 witnesses and conducted four forensic examinations, for which the body had to be exhumed, but failed to identify any person “with any connection to committing a crime”. The investigation failed to yield any evidence that Mr. Akmatov had been beaten by police officers.

4.8 The State party submits that the investigation into the death of Mr. Akmatov was carried out “superficially”, that the evidence was recorded improperly and that the perpetrators could not therefore be identified during the first four months of the investigation, which is why it was suspended on 24 September 2005.

4.9 On 5 September 2005, an autopsy confirmed the cause of death from blunt trauma to the brain, but could not exclude that the trauma had not been caused by “falling down”. Nonetheless, the investigators failed to ascertain whether Mr. Akmatov had indeed fallen and the location of the incident.

4.10 On 29 June 2005, near Mirza-Aki, the head of the local police station, Z.T., had an “altercation” with the author during which Z.T. “twisted” the author’s fingers, causing “bodily injuries”. On 18 July 2005, the Osh regional prosecutor’s office initiated a criminal investigation into this fact. The investigation was discontinued⁹ on 30 June 2006.¹⁰

4.11 The State party submits that, on an unspecified date, the author’s lawyer petitioned the Osh City Court to reopen the investigation into the death. The petition was rejected by the Osh City Court on 11 January 2011 and again, on appeal, by the Osh Regional Court, on 15 February 2011. The State party also submits that counsel did not appeal this decision under the supervisory review procedure.

Author’s comments on the State party’s observations

5.1 In his letters dated 10 November 2011 and 6 April 2012, the author, responding to the State party’s observations on admissibility and the merits, submits that the present

⁶ The State party provides no further explanation of the term “prophylactic work”.

⁷ No copy of the statement has been provided, and its content has not been described.

⁸ This time seems to contradict the State party’s submission in para. 4.4.

⁹ The State party provides no reason for the discontinuation.

¹⁰ The State party submits that on 14 April 2006 the officer in question was fired from the police for acts that “discredited” the name of the law enforcement officer. It is unclear whether this dismissal was related to the incident with the author of the communication.

communication should be considered by the Committee as admissible. Referring to the Committee's jurisprudence in *Akhadov v. Kyrgyzstan*¹¹ and other cases, he considers the supervisory review proceedings discretionary in nature.

5.2 The author reiterates his position regarding the violations of the Covenant. He submits that the injuries to his son could not have been caused by anything other than torture in police custody, and that torture was the reason why his son ended up dead. That was especially clear in the light of the fact that the State party failed to put forward any plausible explanation for the events of 3 May 2005. The final forensic medical review of 19 March 2008 confirmed that the injury to the victim was from the impact of a blunt, hard object and that the "contact" took place "a few hours before death".

5.3 The author also disputes the State party's submission that Turdubek Akmatov was brought to the police station at approximately 3 p.m. on 3 May 2005. The State party, in its submission, contradicts itself by stating that Mr. Akmatov was brought to the police station at 9 a.m., which is consistent with the testimony of the Akmatov family.

5.4 He further submits that the State party lacked safeguards to protect his son's life. The victim was not provided with a lawyer, his detention was not registered and a medical examination was not allowed. These failures created an environment that facilitated his torture and ultimate death.

5.5 The author reiterates his position regarding the State party's failure to conduct an effective investigation and to provide redress for torture. Mr. Akmatov's family has been denied compensation, despite having made extensive efforts to have Turdubek's death properly investigated. The absence of any real attempt to establish criminal liability makes a civil claim impossible as a matter of law.

5.6 The author invites the Committee to find that the State party violated all the articles mentioned above, to create an independent commission of inquiry to investigate the exact circumstances of Turdubek's torture and death, to urge the State party to pay compensation to the family of the victim and, finally, to urge the State party to introduce safeguards to prevent similar violations in the future.

State party's further observations

6.1 On 3 February 2012, the State party, reiterating its position, submitted that Turdubek Akmatov was detained at approximately 3 p.m., not 9 a.m. This was confirmed by the witnesses, officers N.T. and Y.S. Officer Y.S. testified that Mr. Akmatov was not beaten while in custody and that when he left the police station he was in "normal condition", with "no injuries on visible parts of his body". It is true that initially officer M.E. testified having witnessed the beating of Mr. Akmatov, but he later recanted his testimony, stating that he had been pressured by the victim's father, Suyunbai Akmatov. Officer M.E. also testified that he was not even present at the police station on the day in question.

6.2 The State party submits that several other officers had seen Turdubek Akmatov and testified that he was without any injuries and that he was walking "without anyone's help". The

¹¹ See, among others, communication No. 1503/2006, *Akhadov v. Kyrgyzstan*, Views adopted on 25 March 2011, para. 5.5.

author's assertions that those officers were under pressure are not supported by the evidence, since the questionings were carried out by investigators of the prosecutor's office.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it 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 the State party's submission that counsel for the author has not sought the supervisory review of the Osh City Court order of 11 January 2011 and the Osh Regional Court order of 15 February 2011. The Committee recalls its jurisprudence, according to which filing a request for supervisory review with regard to a court decision that has entered into force constitutes an extraordinary remedy, which would depend on the discretionary powers of the court in question, and the State party would have to show that there was a reasonable prospect that such request would result in an effective remedy in the circumstances of the case.¹² The State party has not shown, however, the extent to which petitions to the Supreme Court for supervisory review procedures have been applied successfully in cases concerning effective investigation of torture claims. In such circumstances, the Committee finds that article 5 (2) (b) of the Optional Protocol does not preclude it from considering the communication.

7.4 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, his claims under articles 6 (1) and 7, read separately and in conjunction with article 2 (3), of the Covenant. The Committee declares the claims admissible and 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 submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee notes the author's claim that his son died as a result of the ill-treatment and torture he suffered in police custody, being in good physical and mental health before being taken into custody, and that he was not given access to a lawyer while in custody. The Committee also notes the irrefutable evidence of multiple autopsies and examinations that were conducted, which showed that numerous bruises, lacerations and abrasions to the head, chest and fingers were inflicted on the victim. The examinations also revealed serious injuries to the brain, lung, kidneys and spleen caused by "blunt, hard objects".

¹² See communications No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003, para. 7.4; No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; and No. 1814/2008, *P.L. v. Belarus*, decision of inadmissibility adopted on 26 July 2011, para. 6.2.

8.3 The Committee takes note of the author's claims regarding the inadequate investigation into allegations of torture in police custody, and of the death of the author's son as a result of torture. No perpetrators were identified, despite the fact that officer M.E. made a statement according to which he saw at least one other police officer, N.T., beating the victim in the police station on 3 May 2005 and despite the fact that the victim, shortly before his death, identified Z.T. as the main perpetrator of the alleged crime. Although the State party claims that its investigative authorities have questioned more than 60 witnesses and conducted four forensic examinations, it concedes that the initial stages of the investigation were carried out in a manner that was superficial, that the investigation itself lasted more than four years, that the evidence was improperly recorded and that, ultimately, the investigation was discontinued.

8.4 The Committee notes the author's claim in relation to the arbitrary deprivation of his son's life, and his reference to the Committee's general comment No. 6 (1982) on the right to life and its jurisprudence, according to which States parties, by arresting and detaining individuals, take the responsibility to care for their life,¹³ and that criminal investigation and subsequent prosecution are necessary remedies for violations of human rights such as those protected by article 6 of the Covenant.¹⁴ It further recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, that where investigations reveal violations of certain Covenant rights, such as those protected under articles 6 and 7, States parties must ensure that those responsible are brought to justice. Although the obligation to bring to justice those responsible for a violation of articles 6 and 7 is an obligation of means, not of result,¹⁵ States parties have a duty to investigate in good faith and in a prompt and thorough manner all allegations of serious violations of the Covenant made against it and its authorities.

8.5 The Committee also recalls that the burden of proof in relation to factual questions cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information.¹⁶

8.6 The Committee observes that the State party has failed to explain exactly what happened to Turdubek Akmatov during the considerable time when he was in police custody. The State party has simply noted that the police officers conducted "prophylactic work" with the victim, without providing any details as to what this "work" might have entailed. The State party has provided no records of questioning, interrogation or statements in relation to the victim. Furthermore, it has provided no copies of statements made by police officers and other witnesses, although it submits that "more than 60 witnesses" were questioned in this connection. The Committee further notes that there are no records of the registration of Mr. Akmatov to document his whereabouts during the 10 hours he was in detention on 3 May 2005.

¹³ See communication No. 763/1997, *Lantsov v. Russian Federation*, Views adopted on 26 March 2002, para. 9.2.

¹⁴ See communication No. 1436/2005, *Sathasivam v. Sri Lanka*, Views of 8 July 2008, para. 6.4; communication No. 1275/2004, *Umetaliev and Tashtanbekova v. Kyrgyzstan*, Views of 30 October 2008, para. 9.2.

¹⁵ See communications No. 1917/2009, No. 1918/2009, No. 1925/2009 and No. 1953/2010, *Prutina at al. v. Bosnia and Herzegovina*, Views adopted on 28 March 2013, para. 9.5.

¹⁶ See communications No. 30/1978, *Bleier v. Uruguay*, Views adopted on 29 March 1982, para. 13.3; and No. 84/1981, *Dermat Barbato v. Uruguay*, Views adopted on 21 October 1982, para. 9.6.

8.7 In the light of the inability of the State party to rely on a deficient and inconclusive investigation to rebut the author's allegations that his son was killed due to beatings he sustained while in custody, and in the light of the information contained in the medical forensic expert opinions, which are consistent with the author's version of events, the State party is responsible for the arbitrary deprivation of Turdubek Akmatov's life, in breach of article 6 (1) of the Covenant.¹⁷

8.8 The Committee takes into consideration the fact that the findings of the autopsies and medical forensic examinations that were conducted are consistent with other evidence, suggesting that the author's son was subjected to acts of torture. The Committee considers that, in the circumstances of the present case and in the light of the inability of the State party to rely on a deficient and inconclusive investigation to rebut the author's allegations that his son was tortured while in police custody, due weight should be given to the author's allegations. The Committee therefore concludes that the facts before it disclose a violation of the rights of the victim under article 7 of the Covenant.

8.9 As to the claims under article 2 (3), read in conjunction with articles 6 (1) and 7, of the Covenant on the ground that the State party failed in its obligation to properly investigate the victim's death and allegations of torture and to take appropriate remedial measures, the Committee recalls its consistent jurisprudence that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by articles 6 (1) and 7 of the Covenant.¹⁸ The Committee notes that the investigation into the allegations of torture and the subsequent death were not carried out promptly and effectively and that no suspects were identified, despite a number of incriminatory witness accounts. In that regard, the Committee notes, for example, that officer Z.T. was never charged in spite of the serious allegation made against him. In the absence of a plausible explanation by the State party on the discrepancies in the findings relating to different stages of the criminal investigation and the reason why none of the alleged perpetrators were ever charged or prosecuted despite the detailed allegations levelled against them, the Committee concludes that the State party failed to properly investigate the circumstances of the author's son's death and the allegations of torture and ill-treatment and hence denied the author's son an effective remedy, in violation of his rights under article 2 (3), read in conjunction with articles 6 (1) and 7.

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 articles 6 (1) and 7, read separately and in conjunction with article 2 (3) of the Covenant.

10. 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. Accordingly, the State party is obligated, inter alia, to conduct a new, expeditious, impartial, effective and thorough investigation into the exact circumstances of the author's son's death, to prosecute those responsible and to provide the author with adequate compensation and appropriate measures of

¹⁷ See communications No. 1436/2005, *Sathasivam and Sarawathi v. Sri Lanka*, Views adopted on 8 July 2008, para. 6.2; No. 1186/2003, *Titiahonjo v. Cameroon*, Views adopted on 26 October 2007, para. 6.2; No. 888/1999, *Telitsina v. Russian Federation*, Views adopted on 29 March 2004, para. 7.6; and No. 84/1981, *Dermitt Barbato v. Uruguay*, Views adopted on 21 October 1982, para. 9.2.

¹⁸ 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, para. 18.

satisfaction. The State party is also under an obligation to prevent similar violations in the future, including by removing obstacles for obtaining civil reparation independently of any related criminal proceedings.

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 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 those Views.
