



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2127/2011*^{*}, **

<i>Communication submitted by:</i>	Urmatbek Akunov (represented by Rupert Skilbeck of the Open Society Justice Initiative and Kanat Djailoev)
<i>Alleged victim:</i>	Bektemir Akunov (the author's father, deceased)
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	3 October 2011 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 27 December 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	27 October 2016
<i>Subject matter:</i>	Death in custody after alleged arbitrary detention and torture
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Right to life; torture; prompt and impartial investigation; arbitrary detention; right to freedom of expression
<i>Articles of the Covenant:</i>	6 (1) and 7, read alone and in conjunction with 2 (3), 9 (1) and 19
<i>Articles of the Optional Protocol:</i>	None

* Adopted by the Committee at its 118th session (17 October-4 November 2016).

** 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 Salvioli, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.



1. The author is Urmatbek Akunov, a Kyrgyz national born in 1981, who submits the communication on behalf of his father, Bektemir Akunov, also a Kyrgyz national born in 1954 and deceased in 2007. The author claims that his father's detention, torture and subsequent death in custody constitute a violation of articles 6 (1) and 7, read alone and in conjunction with article 2 (3), and of articles 9 (1) and 19 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 Bektemir Akunov was a civic activist in Kyrgyzstan. After participating in a series of hunger strikes and political protests in Bishkek in early April 2007,¹ on 14 April, he returned to the town of Naryn and at approximately 7 p.m. went to the mayor's office at the City Hall to request a meeting with the authorities to discuss the possibility of organizing political protests in Naryn.

2.2 According to statements made later by the police, at 7.30 p.m. a staff member of the mayor's office called the police and claimed that an intoxicated man was acting in a rowdy manner. In response, the Deputy Chief of the Department of Internal Affairs, S.K., went to the City Hall, spoke to the staff member of the mayor's office who had called the police and left. S.K. was called again at approximately 8.30 p.m., as the staff member of the mayor's office claimed that Mr. Akunov had returned to the City Hall, had been smoking and had sworn at the reception desk officer. It was also claimed that Mr. Akunov had called the mayor of Naryn on his home number. While S.K. was at the City Hall, he claims that the mayor approached him and told him to "take steps within the bounds of the law". According to S.K., he began to search for Mr. Akunov on the streets of Naryn by car and found him walking near the Drama Theatre. S.K. stopped the car and asked Mr. Akunov to get in because there was a complaint against him. Mr. Akunov was brought by S.K. to the Department of Internal Affairs (the police station) at approximately 10 p.m. The case was assigned to the officer on duty, T.N., who called a toxicologist to carry out an alcohol test on Mr. Akunov.

2.3 According to the author, the police report made at the time of Mr. Akunov's detention contains a number of irregularities. The report states that Mr. Akunov was detained under article 366 of the Administrative Liability Code, which relates to intoxication in public. Under that provision, a person may be detained for three hours and then must be released.² However, the detention record was subsequently changed without explanation and the basis for Mr. Akunov's detention was changed to article 364 of the Administrative Liability Code, which refers to disturbing public order and which authorizes detention for a longer period. In addition, the report did not contain the signature of the police officer who compiled it or of any witnesses, contrary to standard procedure. Furthermore, part of the form, including the police officer's surname and Mr. Akunov's personal data, was filled out with one pen, whereas other elements, including the names of the witnesses and grounds for detention, were written with a different pen.

¹ The hunger strikes and political protests were organized by the United Front for a Worthy Future for Kyrgyzstan (United Front) and the author's father took part as an independent civic activist. The participants proposed, inter alia, a number of constitutional reforms and called for the resignation of the then President, Kurmanbek Bakiev. Following the hunger strike that lasted from 6 to 11 April 2007, Mr. Akunov and other participants continued their protests by engaging in anti-government rallies in Bishkek from 11 to 14 April. During the rallies, Mr. Akunov marched in the front row of the protesters, while carrying the national flag and followed by approximately 100 people, to the seat of the President. Several members of the United Front were later persecuted by the Government following the demonstrations in April 2007.

² Reference is made to article 565 of the Administrative Liability Code.

2.4 The author asserts that Mr. Akunov was placed in an administrative detention cell with seven other persons. All of them were staff members of the Naryn Forest Service who had been detained for being drunk. They later stated that as the police took Mr. Akunov to the cell, he was commenting on politics. Subsequently, at around 11 p.m., another person who was drunk was also put in the same cell. Shortly after 11 p.m., the detainees were examined by a toxicologist, whose report indicated that Mr. Akunov had a moderate amount of alcohol in his body. However, in its report on the death of Mr. Akunov, an independent commission of human rights organizations stated that he was sober. Furthermore, according to the author, his father did not drink and had not done so for seven years prior to his death.

2.5 Sometime between 11 p.m. and 11.30 p.m., Mr. Akunov and four police officers were seen near an apartment building opposite the Department of Internal Affairs. A number of residents of the building witnessed the police officers beating Mr. Akunov and later reported that the police officers continued to kick him even after he was handcuffed. Witnesses also stated that Mr. Akunov lay on the ground repeatedly pleading for help, screaming that the police were killing him and that they would not let him leave the detention facility alive. He also asked that someone inform his sister, who lived in a building nearby, about his detention. The police, who have claimed that Mr. Akunov was trying to escape, dragged him back into the detention facility. Four police officers and staff of the Department of Internal Affairs involved in assaulting Mr. Akunov were later identified as K.U.A., U.R., K.U.B. and U.A.³ They claimed that Mr. Akunov had attempted to escape from detention and had resisted their efforts to return him to the detention facility; they also claimed that he fell to the ground and when they tried to lift him he resisted. According to one of the witnesses, the four police officers dragged Mr. Akunov into the Department of Internal Affairs, two by the arms and two by the legs, and handcuffed him.

2.6 Between 11.30 p.m. and midnight, the authorities released the eight other detainees with whom Mr. Akunov shared a cell. The Forest Service members later reported that as they were leaving the Department of Internal Affairs, they saw police officers carrying Mr. Akunov towards the detention facility, his entire body covered in dust from having been dragged along the ground. According to the author, the police officers again placed Mr. Akunov in the administrative detention cell, where he was the only detainee to be kept overnight. Nearby residents heard Mr. Akunov's continuous pleas for help until 5 a.m. the next morning.

2.7 At approximately 8.30 a.m., Mr. Akunov was taken before the chief of the police station, T.N. According to police statements, Mr. Akunov admitted that he had sworn at people at the City Hall the day before and apologized for his behaviour, explaining that he was drunk and had gone there to find a friend. The police continued to hold Mr. Akunov in the police station, stating that they planned to submit the case to the court, but could not do so since it was a public holiday.

2.8 The author submits that at no point did the police notify any family member that Mr. Akunov had been detained, as required by article 316 (2) of the Criminal Code, despite the fact that he had explicitly asked that his sister be informed and had given her address; furthermore, he was not provided with any medical attention. The chief of the police station, T.N., later explained that Mr. Akunov would have been released if a family member had requested it and taken responsibility for him.

2.9 Two guards were on duty later that morning. One of them, B.Zh., later testified that he left the detention facility at approximately 11.50 a.m. to escort a visitor and when he returned five minutes later, his colleague, B.K., informed him that Mr. Akunov had hanged

³ Full names of the police officers are available on file.

himself. He ran to the cell and saw Mr. Akunov convulsing, hanging from his shirt tied to the iron bar of his cell at a height of 2.3 m. He tried to help him and, with others, attempted artificial respiration, but to no avail.

2.10 On 15 April 2007, a government forensic medicine evidence board conducted an examination of Mr. Akunov's body, assessing his injuries and the circumstances of his death. The report determined that death had resulted from compression of the neck by a noose in conjunction with an atypical asphyxia (suicide by hanging). It identified "an atypical strangulation indentation, faint, of dark-red colour, width around 1.4 cm". The autopsy revealed haemorrhaging and moderate swelling in the brain, which it concluded was caused by the impact of a hard object, and haemorrhaging in the chest cavity and lungs. The report also identified a number of external injuries. They included multiple abrasions and haematomas to the fingers, elbows, knees and toes; bruises on the forearm and shoulder; abrasions on the head; and 18 linear abrasions around the kidneys and on the back of the ribcage. It also noted damage to the radiocarpal joint and discolouration of the scrotum. A chemical analysis of Mr. Akunov's blood and urine tests, included in the report, indicated no traces of ethyl alcohol.

2.11 On 7 June 2007, a re-enactment of Mr. Akunov's self-hanging took place at the request of his family's lawyer (the request was submitted on 26 May 2007). On 12 June 2007, other investigations⁴ led by the State Centre of Forensic Examination of the Ministry of Justice concluded that the signature on the written statement made by Mr. Akunov, in which he had admitted that he was drunk, had been executed by him while he was in an unusual state of agitation or stress. Moreover, an examination of Mr. Akunov's clothes was conducted in order to clarify the circumstances of his death. On 11 June 2007, the State Centre of Forensic Examination noted that the clothes were damaged due to friction or his being dragged along the ground. In addition, a second forensic medical examination was carried out by the forensic medicine evidence board, which determined, on 5 July 2007, that Mr. Akunov had died because of suffocation due to mechanical asphyxiation. The report concluded that the numerous bruises and cuts on his body were not related to the cause of death and had most likely been caused by convulsions during the hanging. The author states that this conclusion was reached, even though Mr. Akunov's body was suspended from a smooth iron bar in a bare detention cell. The report did, however, confirm that there were "rather significant pockets of fresh haemorrhage" in Mr. Akunov's brain.

2.12 A criminal case was initiated by the Naryn Prosecutor's Office against the two police officers who had been on duty, B.K. and B.Zh., and, as a result, they were both charged on 16 July 2007 with the crime of negligence under article 316 (2) of the Criminal Code.

2.13 On 18 May 2007, the author submitted a complaint to the Naryn City Prosecutor's Office requesting the initiation of criminal proceedings for torture and abuse of authority against the four police officers who were seen beating Mr. Akunov outside the Department of Internal Affairs. On 14 July 2007, the Prosecutor's Office issued a decision refusing to open criminal proceedings, as there was no evidence that the injuries sustained by Mr. Akunov were caused by the four police officers. This determination was based on (a) alleged discrepancies in the eyewitness testimony of residents living close to the police station and (b) the conclusion of the report issued by the forensic medicine evidence board on 5 July 2007, which stated that Mr. Akunov might have incurred his injuries as a result of hanging himself and convulsing.

2.14 On 16 July 2007, the author filed a second petition with the Prosecutor's Office, again requesting the initiation of a criminal case against the four police officers involved in

⁴ All additional examinations were requested by the lawyer of Mr. Akunov's family on 26 May 2007.

the arrest of his father. He alleged that they had tortured his father to obtain a confession, exceeding their authority, in violation of article 301 and 305 of the Criminal Code. He also requested the initiation of a case against the Deputy Chief of the Department of Internal Affairs, the duty officer who initially processed Mr. Akunov's detention and the Deputy Chief of the Regional Department of Internal Affairs, all on the same grounds. In the petition he also asserted that the killing of Mr. Akunov had caused substantial pain, suffering and significant harm to the family. On 20 July 2007, the Deputy Public Prosecutor of the Naryn Region replied to the petition, stating that the allegations had been investigated on 16 April 2007 and that a criminal case was in progress against B.K. and B.Zh. The reply did not address the allegations in substance, but simply claimed that there were no grounds to initiate a separate criminal case against other officers of the Naryn City Department of Internal Affairs.

2.15 On 24 August 2007, the author filed a request with the Naryn city court to return the criminal case to the Prosecutor's Office in order to address deficiencies in its investigation and to conduct a further inquiry. He also requested an investigation and the opening of a criminal case against the police officers who had allegedly beaten Mr. Akunov, as well as against the Deputy Chief, S.K., and the chief of the police station, T.N. On 27 August 2007, the Court upheld the author's request; however, the Naryn City Prosecutor requested the Naryn regional court to annul the ruling of the city court. On 25 September 2007, the Naryn regional court reviewed the request and upheld the city court order to return the criminal case to the Prosecutor's Office for further investigation. On 20 December 2007, the Supreme Court upheld the decisions of the Naryn city and regional courts, however, on 15 February 2008, the Prosecutor's Office concluded once again that no crimes had been committed by the Deputy Chief, S.K., the chief of the police station, T.N., and two officers of the Department of Internal Affairs, and refused to indict them.

2.16 On 25 February 2008, the author submitted an application to the Naryn City Prosecutor, asking that the decision not to indict the police officers be reversed. The application also requested a transfer of the investigation to the Prosecutor General's Office. On the same day, the Prosecutor denied the author's application, stating that the investigation had revealed that Mr. Akunov had not been beaten by the police but had sustained his injuries as he escaped from the police station and while he was lying on the ground resisting arrest, or while convulsing after he hung himself. The Prosecutor also concluded that the police had not falsified the detention record, but that the change from article 366 to 364 in the report was the result of a typographical error.

2.17 On 4 April 2008, the Naryn city court heard the case against the two police officers who were on duty on the day of Mr. Akunov's death, B.K. and B.Zh. The court found B.K. guilty of negligence under article 316 (2) of the Criminal Code and sentenced him to 3 years' imprisonment with a probation period of one year. The court acquitted B.Zh. The acquittal of B.Zh. was subsequently upheld by the Naryn regional court on 7 May 2008 and by the Supreme Court on 2 September 2008.

2.18 Mr. Akunov's family obtained a limited award of damages, but not through the criminal process as is usually the case in such matters. On 25 June 2008, the author filed a civil claim against the Ministry of Internal Affairs, along with the Ministry of Finance, for financial damages and compensation for pain and suffering. The claim requested a payment of financial damages of 490,507 soms,⁵ required for the continued support of Mr. Akunov's four surviving children,⁶ and substantial compensation for pain and suffering. He also requested an official public apology for the death of his father. On 2 December 2008, the Pervomaysk court in Bishkek awarded the author the bulk of the financial damages that he

⁵ Approximately \$11,000.

⁶ Mr. Akunov was the sole breadwinner in his family.

had requested,⁷ along with a small sum for moral damages.⁸ The moral damages were based solely on the damage caused by the negligence of the officials, who were considered to have allowed his father to commit suicide. Following an appeal by the Ministry of Internal Affairs, on 19 March 2009, a judicial board on civil cases of the Bishkek city court overturned the decision and reduced the award of financial damages from 465,139 to 27,967 soms.⁹

2.19 In 2009, the author wrote to the then President of Kyrgyzstan, Kurmanbek Bakiev, indicating that his family had been left without their father and had lost their primary source of financial income. A discretionary payment was made from the presidential fund of 50,000 soms¹⁰ for the university studies of Mr. Akunov's daughter¹¹ and 15,000 soms¹² for his younger son.

2.20 In June 2010, following a change in government, the author filed a petition with the Prosecutor General's Office in an attempt to renew the criminal investigation, arguing that neither the investigations nor the courts had considered all the facts and circumstances surrounding the death of Mr. Akunov. On 10 June 2010, the Prosecutor General's Office ordered that the criminal investigation be recommenced owing to newly discovered circumstances and ordered that the new proceedings be monitored by the Naryn regional prosecutor. On 17 July 2010, the Naryn regional prosecutor concluded his investigation and sent a report to the Supreme Court. The report did not change any findings from the prior investigations. In examining the alleged explanatory statement in which the police claimed Mr. Akunov admitted to having been drunk, the prosecutor recalled that the experts found that it was written in a state of great stress, but maintained that there were no grounds to consider that Mr. Akunov was pressurized to write it. The prosecutor was unable to obtain further evidence from the four local residents who had witnessed the police beating Mr. Akunov: the prosecutor claimed that two eyewitnesses refused to testify, one had died and the fourth could only give vague testimony because so much time had passed. The prosecutor finally identified two issues requiring further investigation. The Supreme Court recognized that various questions still had not been resolved, including the allegation that Mr. Akunov wrote the alleged explanatory statement under pressure and how and where Mr. Akunov had received his injuries. Nevertheless, on 7 October 2010, the Supreme Court refused to continue the investigation on the grounds that the prosecutor had not presented any new facts in his report.

2.21 The author submits that he is not required to pursue other remedies such as civil or disciplinary proceedings and that the penalties which have been imposed, or remedies which have been granted, are inadequate and ineffective. In light of the gravity of the violations against Mr. Akunov, nothing less than a criminal investigation and prosecution would constitute an effective remedy. In addition, the author's civil claims for compensation have not resulted in an effective remedy. The compensation which was eventually granted was inadequate and failed to recognize or remedy the serious violations of Mr. Akunov's rights. Mr. Akunov's family is unable to pursue further civil claims against the police officers involved in his abuse and death, because the criminal charges against those officers have been terminated and civil claims against State officials can only be brought in the context of a criminal prosecution.

⁷ 465,139 soms, approx. \$10,200.

⁸ 100,000 soms, approx. \$2,200.

⁹ Approximately \$600.

¹⁰ Approximately \$1,100.

¹¹ The entire amount was sent directly to the university.

¹² Approximately \$300.

2.22 A range of local and international human rights organizations have expressed concern over the beating and death of Mr. Akunov in detention and the failure of the Kyrgyz authorities to investigate the case properly.¹³ On 2 May 2007, the Special Representative on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a letter of allegation to the Government of Kyrgyzstan regarding the death of Mr. Akunov, expressing concern at the allegations that he “had been subject to inhumane and degrading treatment whilst in detention”, called on the Government to provide further information regarding his death and recommended a thorough investigation. The Government did not respond. On 23 June 2009, as part of its periodic review of Kyrgyzstan, the Committee against Torture stated that reports of independent experts indicated that Mr. Akunov had been tortured prior to his death in detention. The Committee asked Kyrgyzstan to update it on the status of the investigation into those reports and on the prosecution of the two police officers, including whether more serious charges had been brought.¹⁴ Kyrgyzstan has not published any response to this request.

2.23 The author submits that the independent investigation by non-governmental organizations into Mr. Akunov’s death reported that torture in the Naryn Regional Department of Internal Affairs, especially in Naryn city, “has a strong systemic nature”.¹⁵ A number of other international bodies and reports have confirmed this pattern of torture in police custody in the State party and a consistent failure to independently and effectively investigate such abuse. The violations against Mr. Akunov are also consistent with the hostility of the Kyrgyz authorities towards civil society and political activists, which began under the Government of former President Bakiev in March 2005.

The complaint

3.1 The author claims that the State party is responsible for the death of his father, who was detained by the authorities in good health, was beaten by police officers and found dead in custody the next day. The State is presumed to be responsible for any death in custody and has not provided reliable evidence or an explanation as to how the author’s father died. The author adds that there was no apparent reason for Mr. Akunov to commit suicide, given the fact that the day before his death he was determined to pursue his civic activism by requesting a meeting with the authorities to discuss the possibility of organizing political protests in Naryn. The State party is therefore responsible for a violation of article 6 (1) of the Covenant.

3.2 The author also claims that the treatment inflicted upon his father by police officers while in custody amounts to torture in violation of article 7 of the Covenant, or at a minimum to cruel and inhuman treatment. The injuries detected on the body cannot be explained or excused by his alleged attempt to escape, or as incidental to his supposed suicide.

¹³ Reference is made, inter alia, to the resolution of the Kyrgyz parliament issued on 19 April 2007, in which it criticized the authorities in eastern Naryn province for illegally detaining Mr. Akunov and called for an impartial investigation into his death; to the conclusions of the independent commission, led by Human Rights Centre Kylym Shamy, on its investigation into the causes of Mr. Akunov’s death, dated 20 April 2007; and to the press release of the International Helsinki Federation for Human Rights, Human Rights Centre Kylym Shamy and the Kyrgyz Committee for Human Rights dated 22 August 2007, stating that cases of death under torture were mounting in the city of Naryn. Other international actors, such as the World Organisation Against Torture and the United States of America Department of State, also expressed grave concerns regarding the arrest, detention and resulting death in custody of Mr. Akunov.

¹⁴ See CAT/C/KGZ/Q/2, para. 25.

¹⁵ The conclusion of the independent commission led by Human Rights Centre Kylym Shamy.

3.3 The author further claims that the State party failed to take measures to protect his father from torture and from arbitrary deprivation of life, in violation of articles 6 (1) and 7, read in conjunction with article 2 (3), of the Covenant. The State party also failed to conduct a prompt, impartial, thorough and effective investigation of the circumstances leading to the death in custody of the author's father, in violation of articles 6 (1) and 7, read in conjunction with article 2 (3).

3.4 Furthermore, the State party failed to provide the author with access to effective remedies for the torture and death of his father, including compensation and adequate reparation, in violation of articles 6 (1) and 7, read in conjunction with article 2 (3), of the Covenant.

3.5 The author claims that the authorities detained his father and subsequently tortured and killed him in response to his civic and political activism and expression of views critical of the Government. He was not detained for any legitimate purpose and the detention was therefore arbitrary and in violation of article 9 (1) of the Covenant. His subsequent mistreatment and death also violated his freedom of expression under article 19 of the Covenant.

State party's observations on admissibility and the merits

4.1 On 12 March 2013, the State party submitted its observations on admissibility and the merits. Regarding the facts, the State party submits that Mr. Akunov was placed in a lock-up ward of the Naryn city Department of Internal Affairs at midnight on 15 April 2007 for having committed an administrative offence. Left unattended by guards, he committed suicide by hanging himself for an unknown reason. A criminal case was initiated under article 316 (2) of the Criminal Code and subsequently criminal proceedings were instituted against two officers of the Department of Internal Affairs, B.K. and B.Zh. On 4 April 2008, the Naryn city court acquitted B.Zh. under article 316 (2) for lack of corpus delicti in his actions and convicted and sentenced B.K. under the same provision to 3 years' imprisonment. Pursuant to article 63 of the Criminal Code, it suspended the sentence with a probation for a period of one year. On 7 May 2008, the acquittal of B.Zh. was upheld by the Judicial Board on Criminal Cases and Administrative Offences of the Naryn regional court and on 2 September 2008, by the Judicial Board on Criminal Cases and Administrative Offences of the Supreme Court. The State party adds that, pursuant to article 96 of the Constitution, the Supreme Court is the highest body of judicial power in respect of civil, criminal, administrative and other cases; it revises the rulings of local courts upon appeal by the participants in the judicial process, in accordance with procedures established by law. Under article 382 (2) of the Criminal Procedure Code, rulings and resolutions of the Judicial Board on Criminal Cases and Administrative Offences of the Supreme Court are final and not subject to appeal.

4.2 Under article 384 of the Criminal Procedure Code, a sentence, ruling or resolution of the court that becomes amenable to execution can be annulled and the case proceedings reopened owing to newly discovered circumstances. Pursuant to article 387 (1) of the Criminal Procedure Code, the Judicial Board on Criminal Cases and Administrative Offences of the Supreme Court re-examined Mr. Akunov's case, based on the report submitted by prosecutor N.D. On 7 October 2010, the Board decided to set aside the report of prosecutor N.D., since the conclusions thereof did not correspond to any grounds for reopening the proceedings.

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

5.1 On 14 May 2013, the author submitted that the State party's observations did not address the evidence or violations set out in the present communication, and did not dispute the admissibility thereof. Rather, they repeat the assertion that Mr. Akunov committed

suicide, the very assumption on which the investigation was based, list a few of the decisions taken during that investigation, and argue that the law in Kyrgyzstan does not allow the investigation to be reopened. None of that information undermines the arguments set out in the communication. The author therefore requests that the Committee proceed to consider it on the merits and find that the State party is responsible for the violations set out in his initial submission.

5.2 The communication sets out in detail why the investigation was inadequate and ineffective. However, the State party's observations do not address those inadequacies in any way. For example, they do not provide any explanation for the multiple injuries which the examination of Mr. Akunov's body revealed, including numerous abrasions and bruises to his torso (especially around the kidneys), shoulders, elbows, knees, fingers and toes, as well as haemorrhaging in his brain, chest cavity and lungs. They also do not provide any response to concerns, such as the fact that the investigators failed to secure the scene of Mr. Akunov's death, ignored a message written in blood on the wall of his cell,¹⁶ discounted the testimony of the witnesses who saw the police beating Mr. Akunov and failed to investigate the numerous irregularities in the procedure for his detention. As explained in the initial submission, the trial of the two officers was wholly inadequate: it was based on an ineffective investigation, charges were brought not for the torture or killing of Mr. Akunov, but only for negligence in failing to supervise him and allegedly allowing him to hang himself, and even then, one officer was acquitted while the other was given a suspended sentence. No officers have been held responsible for beating Mr. Akunov or for his death. The State party's response is therefore insufficient given the seriousness of the allegations.

5.3 As to the reopening of the investigation, the author submits that the fact that an investigation was reopened and then closed without making any progress in identifying those responsible for the beating and death of Mr. Akunov does not indicate a thorough or effective investigation. Furthermore, the Supreme Court refused to continue the renewed investigation and again closed the case, despite recognizing that various questions had still not been resolved, including the allegation that Mr. Akunov wrote the alleged explanatory statement under pressure (see para. 2.11), and how and where Mr. Akunov received his injuries. That only highlights the ineffective nature of the investigation.

5.4 Aside from its brief recitation of a handful of steps from the investigation, the State party's observations do not address any of the other violations raised in the communication. Despite acknowledging that Mr. Akunov died in police custody, they do not provide any substantiated explanation for his death, based on a "thorough, prompt and impartial investigation" capable of rebutting the prima facie presumption that he died as a result of an arbitrary killing.¹⁷ They do not address the injuries, which were inflicted on Mr. Akunov while in custody, or their complete failure to implement safeguards which could have protected him from ill-treatment and ultimately the arbitrary deprivation of his life. The observations effectively confirm that the State party has not provided Mr. Akunov's family with an effective redress. Finally, the observations do not address the arguments and evidence which demonstrate that Mr. Akunov was arbitrarily detained, tortured and killed in response to his civic and political activism and expression of views critical of the Government.

5.5 Given the State party's failure to address the claims set out in the communication, the author requests the Committee to:

(a) Make a finding that the State party is responsible for the death and torture or inhuman and degrading treatment of his father, under articles 6 (1) and 7 of the Covenant;

¹⁶ The inscription, written in the Kyrgyz language, read: "This day will pass".

¹⁷ See, communication No. 1225/2003, *Eshonov v. Uzbekistan*, Views adopted on 22 July 2010, para. 9.2.

(b) Make a finding that the State party has violated its obligation to establish safeguards against torture and arbitrary killings, that it should investigate the torture and death of Mr. Akunov and provide an effective remedy, under articles 6 (1), 7, and 2 (3) of the Covenant;

(c) Make a finding that the State party is also responsible for arbitrarily detaining Mr. Akunov, in violation of article 9 (1) of the Covenant, and for violating his freedom of expression under article 19 of the Covenant, as it detained Mr. Akunov in retaliation for the expression of his political and civic views, and his detention did not pursue legitimate aims;

(d) Urge the State party to acknowledge the arbitrary nature of Mr. Akunov's detention and the role of the State in his torture and death, publish the decision of the Committee and issue a public apology to the family of Mr. Akunov for the violation of his rights;

(e) Urge the State party to create an independent commission of inquiry to investigate the circumstances of the detention, torture and death of Mr. Akunov. Such a commission should not be limited to members of the Prosecutor's Office and/or the Ministry of Interior but include independent actors, and should have the power to initiate a criminal prosecution of those found to be the material and intellectual authors of his death;

(f) Urge the State party to pay just financial compensation to the family for the torture and unlawful death of Mr. Akunov;

(g) Urge the State party to provide appropriate training for judges, prosecutors, lawyers and law enforcement officers on the rights of detainees, the prohibition of torture and ill-treatment and the prohibition of retaliation against those who engage in civic or political activism, or express views contrary to or critical of the Government;

(h) Urge the State party to introduce safeguards to prevent similar violations from occurring in the future, including the creation of an independent mechanism entrusted to investigate torture allegations in full accordance with international norms and domestic legislation; ensure registration of all detainees from the moment of detention and proper monitoring of detention facilities; ensure prompt and regular medical examinations in detention; ensure prompt notification of family members and allow visits by family members and lawyers to those in police detention; and also protect freedom of expression of all individuals in the State party, including of their political views.

State party's additional submission

6.1 On 3 September 2013, the State party made an additional submission. Regarding the facts, it submits that Mr. Akunov entered Naryn City Hall at approximately 7.30 p.m. on 14 April 2007 in a drunken state. Using obscene words, he requested the officers on duty to call the mayor of Naryn and the governor of the Naryn region. Mr. Akunov did not respond to the requests of the officers on duty to cease his rowdy conduct. They therefore asked for police intervention. At approximately 10 p.m. Mr. Akunov was brought to the Naryn city Department of Internal Affairs, where a medical examination established that he was in a state of alcoholic intoxication. An officer of the Department of Internal Affairs filed an administrative offence report under article 364 (1) of the Administrative Liability Code (disorderly conduct) and the offender was placed in a cell for persons detained for having committed an administrative offence. At approximately 11.55 a.m. on 15 April 2007, Mr. Akunov was found hanging from his own shirt in the cell.

6.2 According to the forensic medical examination carried out in order to establish the cause of Mr. Akunov's death and bodily injuries, his death resulted from compression of the neck by a noose in conjunction with an atypical asphyxia (suicide by hanging). On 28 May 2007, the Naryn Prosecutor's Office granted a motion filed by the author and his

lawyer to carry out an additional forensic medical examination, which determined that Mr. Akunov died from compression of the neck by a noose, resulting in mechanical asphyxiation, and that there was no link between his death and the other bodily injuries he had suffered. The State party then reiterates the information summarized in paragraphs 4.1 and 4.2 above.

6.3 Regarding the author's claim that there was no legal assessment made in relation to Mr. Akunov's bodily injuries, the State party submits that according to the conclusions of the additional forensic medical examination, the abrasions and bruises on the side of Mr. Akunov's body that was "in contact with the surrounding objects" could have been caused by convulsions during his suicide by hanging himself on the iron bar in his cell. The investigation did not establish any evidence confirming that Mr. Akunov was subjected to beatings by police officers. For that reason, on 15 February 2008, the Naryn Prosecutor's Office decided to terminate the criminal case owing to a lack of corpus delicti in the actions of police officers. The said decision has not been annulled and is still in force.

6.4 As to the author's assertions that the investigation in the criminal case was carried out in a perfunctory manner and that the exact circumstances of Mr. Akunov's death have not been established, the State party submits that these assertions "do not correspond to reality". Based on the results of the investigation, which included the necessary investigative actions, two forensic medical examinations and examination of witnesses, it was established that Mr. Akunov had committed suicide.

6.5 The State party refutes the author's claims that Mr. Akunov was arbitrarily detained for having expressed his political views and that there were no grounds for placing him in a cell for persons detained for having committed an administrative offence. Mr. Akunov was detained by police officers for having committed an administrative offence, rather than because of his civic and political activism, and placed in a detention cell in compliance with the law.

6.6 In response to the author's claim that Mr. Akunov's family was not compensated for the material and moral damages resulting from his death, the State party submits that the author and his lawyer refused to participate in the hearing of the criminal case by the Naryn city court and did not make any claim for compensation of damages. Furthermore, the author did not avail himself of the right to make a civil claim for compensation of moral and material damages from the culprits.

6.7 As to the author's assertion that the message allegedly written by Mr. Akunov in blood on the wall of his cell, which confirmed that he had been tortured, was ignored by the investigation, the State party submits that this assertion "does not correspond to reality". According to the report of the crime scene examination conducted by officers of the Naryn Prosecutor's Office on 15 April 2007, there were neither inscriptions on the wall nor other notes in Mr. Akunov's cell.

6.8 The State party submits that the rest of the author's claims are similar to the ones addressed above. All of his claims have been duly examined and found to be "uncorroborated". The author was informed accordingly.

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 article 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 Concerning the requirement of exhaustion of domestic remedies, the Committee notes that according to the information submitted by the author, and not objected to by the State party, all available domestic remedies, including appeals to the Supreme Court, have been exhausted. The Committee therefore considers that the requirements of article 5 (2) (b), of the Optional Protocol have been met.

7.4 The Committee considers that the author has sufficiently substantiated his claims under articles 6 (1), 7, read alone and in conjunction with articles 2 (3), 9 (1) and 19 of the Covenant for purposes of admissibility. It therefore declares the author's claims admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

8.2 The Committee notes the author's claim that the State party is responsible for the death of his father, who was detained by the authorities on 14 April 2007, allegedly for having committed an administrative offence, beaten by police officers, repeatedly cried out that he feared for his life and was then found dead in the detention cell of the Naryn city Department of Internal Affairs the next day. The Committee also notes the uncontested evidence in the reports on the forensic medical examination, which revealed haemorrhaging and moderate swelling in Mr. Akunov's brain caused by the impact of a hard object, and haemorrhaging in the chest cavity and lungs. External injuries established on Mr. Akunov's body included abrasions and bruises to his torso (especially around the kidneys), shoulders, elbows, knees, fingers and toes.

8.3 The Committee also notes the author's claims that the State party failed to take measures to protect his father from torture and the arbitrary deprivation of his life, as well as to conduct a prompt, impartial, thorough and effective investigation of the circumstances leading to his death in custody.

8.4 In that context, the Committee recalls its general comment No. 6 (1982) on the right to life and its jurisprudence, according to which by arresting and detaining an individual, a State party takes the responsibility to care for his or her life.¹⁸ 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 of the Covenant, States parties must ensure that those responsible are brought to justice. 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, especially in death in custody cases, cannot rest on the author of the communication alone, 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.¹⁹

¹⁸ See, communication No. 763/1997, *Lantsova v. Russian Federation*, Views adopted on 26 March 2002, para. 9.2.

¹⁹ 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.

8.6 The Committee observes, with reference to the conclusions of the criminal investigation carried out by the Kyrgyz authorities, that the State party has explained that Mr. Akunov committed suicide by hanging himself and that abrasions and bruises on the side of his body that was “in contact with the surrounding objects” could have been caused by convulsions while hanging himself on the iron bar of his cell. Furthermore, the State party claimed that the investigation did not establish any evidence confirming that Mr. Akunov was subjected to beatings by police officers. The Committee observes, however, that the explanation put forward by the State party does not plausibly address a number of critical issues raised in the present communication, such as the nature and extent of the injuries established on Mr. Akunov’s body, according to the report of the forensic medicine evidence board; the findings of the State Centre of Forensic Examination that Mr. Akunov’s clothes were damaged owing to friction or his being dragged along the ground; the testimonies of witnesses, according to which Mr. Akunov repeatedly cried out, while being beaten outside the Naryn city Department of Internal Affairs, that the police would kill him and his calls for help; and a lack of any apparent motive for suicide, given the fact that the day before his death he was determined to pursue his civic activism by requesting a meeting with the authorities to discuss the possibility of organizing political protests in Naryn. The Committee notes that the State party has not provided any information on the thoroughness of the inquiries that have been undertaken to address those issues. The Committee further notes that the State party has failed to explain why none of the police officers involved in assaulting Mr. Akunov on 14 April 2007 outside the Naryn city Department of Internal Affairs has ever been investigated as a suspect, despite the author’s repeated requests to initiate a criminal case against them and the fact that all four of them have been identified by him by name.

8.7 The Committee therefore considers that the above-mentioned factors, taken together and in the absence of persuasive arguments by the State party rebutting the author’s suggestion that his father was tortured and arbitrarily killed while in custody, lead it to conclude that the State party is responsible for violating Mr. Akunov’s rights under articles 6 (1) and 7 of the Covenant.²⁰ Furthermore, the Committee considers that the above-mentioned factors, taken together, also lead it to conclude that the State party’s investigation into the allegations of torture and the highly suspicious circumstances of Mr. Akunov’s death while in State custody, which resulted in the imposition of a suspended sentence on B.K. for failing to prevent Mr. Akunov’s alleged suicide, were inadequate, falling short of the State party’s obligations under articles 6 (1) and 7, read in conjunction with article 2 (3) of the Covenant.

8.8 In the Committee’s view, therefore, there has been a violation of articles 6 (1) and 7, read alone and in conjunction with article 2 (3), of the Covenant. In view of that finding, the Committee will not consider whether in the circumstances of the case there was also a separate violation of Mr. Akunov’s rights under articles 9 and 19 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 by the State party of articles 6 (1) and 7, read alone 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, on his own behalf and on behalf of his deceased father 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

²⁰ See communications No. 1436/2005, *Sathasivam and Saraswathi v. Sri Lanka*, Views adopted on 8 July 2008, para. 6.2; No. 1186/2003, *Tiitahonjo 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 *Dermi Barbatov v. Uruguay*, para. 9.2.

conduct a new, expeditious, impartial, effective and thorough investigation into the exact circumstances of Mr. Akunov's death; to prosecute those responsible; and to provide the author with adequate compensation and appropriate measures of satisfaction. The State party is also under an obligation to prevent similar violations 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 and 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. The State party is requested to publish the present Views.
