



**International Covenant on
Civil and Political Rights**

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Views

Communication No. 1402/2005

<u>Submitted by:</u>	Tatyana Krasnova (represented by counsel, Independent Human Rights Group)
<u>Alleged victim:</u>	Mikhail Krasnov (the author's son)
<u>State party:</u>	Kyrgyzstan
<u>Date of communication:</u>	23 March 2005 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 2 June 2005 (not issued in document form)
<u>Date of adoption of Views:</u>	29 March 2011

<i>Subject matter:</i>	Conviction of a juvenile person in violation of fair trial guarantees.
<i>Substantive issues:</i>	Torture, cruel, inhuman or degrading treatment or punishment; right to be informed, at the time of arrest, of the reasons for arrest; right to humane treatment and respect for dignity; fair hearing; right to adequate time and facilities for the preparation of his defence; right to be tried without undue delay; right not to be compelled to testify against oneself or to confess guilt; procedure against juveniles shall take into account their age; arbitrary interference; privacy.
<i>Procedural issues:</i>	Lack of substantiation of claims.
<i>Articles of the Covenant:</i>	7; 9, paragraphs 2 and 3; 10, paragraph 1; 14, paragraphs 1, 3(b), 3(c), 3(g) and 4; 17
<i>Article of the Optional Protocols:</i>	2

On 29 March 2011, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1402/2005.

[Annex]

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (one hundredth and first session)

concerning

Communication No. 1402/2005**

Submitted by: Tatyana Krasnova (represented by counsel, Independent Human Rights Group)

Alleged victim: Mikhail Krasnov (the author's son)

State party: Kyrgyzstan

Date of communication: 23 March 2005 (initial submission)

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

Meeting on 29 March 2011,

Having concluded its consideration of communication No. 1402/2005, submitted to the Human Rights Committee on behalf of Mr. Mikhail Krasnov 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, paragraph 4, of the Optional Protocol

1. The author of the communication is Mrs. Tatyana Krasnova, a Kyrgyz national born on 4 January 1962. She submits the communication on behalf of her son, Mr. Mikhail Krasnov, also a Kyrgyz national born on 20 May 1985, whose whereabouts were unknown at the time of submission of the communication. She claims a violation by Kyrgyzstan of her son's rights under article 7; article 9, paragraphs 2 and 3; article 10, paragraph 1; article 14, paragraphs 1, 3(b), 3(c), 3(g) and 4; and article 17 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 7 January 1995. The author is represented by counsel, Independent Human Rights Group.

** The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioi, Mr. Krister Thelin and Ms. Margo Waterval.

The facts as presented by the author

2.1 At around 4.30 p.m. on 28 October 1999, the dead body of the 14 year old D.M. was found in the stair landing of a block of flats situated on Sovetskaya street in Bishkek. The body had numerous stab wounds and a constriction mark on his throat. The same day, an investigator of the Department of Internal Affairs of the Sverdlovsk District of Bishkek (Department of Internal Affairs), Mr. M.K., initiated criminal proceedings to investigate the death of D.M.

2.2 At around 8 p.m. on 28 October 1999, officers of the Department of Internal Affairs visited the author's apartment and told her that her 14 year old son had to be taken to the Department of Internal Affairs. Neither the author nor her son were informed, at that time, of the reasons for his arrest. After the author reminded officers that Mikhail was a minor, she was allowed to go with him to the Department of Internal Affairs. Mikhail was then taken to one of the rooms for interrogation; the author was not allowed to be present while her son was interrogated, nor was a lawyer provided to him. The author was told by officers of the Department of Internal Affairs that it was sufficient that a juvenile inspector was present during her son's interrogation. She left the Department of Internal Affairs at 2 a.m. on 29 October 1999, without being allowed to see her son and without being informed of the reasons for his arrest.

2.3 At 10 a.m. on 29 October 1999, the author met with the Head of the Department of Internal Affairs and requested information as to the reasons for Mikhail's arrest. He responded that officers of the Department of Internal Affairs were investigating the death of a minor and identifying individuals who had been involved in the murder.

2.4 At 9 p.m. on 29 October 1999, the author's son was released. Mikhail was not provided with a copy of his arrest report and the author doubts that such a report was ever drawn up. While at home, Mikhail told the author that he was beaten on his head during the interrogation by numerous individuals who entered the interrogation room and was forced to confess to the murder of D.M., his classmate. Officers of the Department of Internal Affairs poked a blood-stained shirt into Mikhail's face, asking whether it was him who had killed D.M. The author's son replied that he has learned about the death of his friend from the officers themselves and was deeply shocked by this news. Mikhail also told the author that he was detained overnight in a cell with an adult man and was deprived of food for 24 hours.

2.5 On 29 October 1999, Mr. U.A. and Mr. R.A. were arrested on suspicion of the murder of D.M. and taken to the Department of Internal Affairs. In the course of pre-trial investigation, they confessed to the murder of D.M. and gave testimonies against the author's son, implicating him in the murder.

2.6 At around 10 a.m. on 30 October 1999, three individuals in civilian clothes visited the author's apartment and told her that Mikhail had to go to the Department of Internal Affairs. No further explanation was provided. Upon arrival to the Department of Internal Affairs, the author and her son were taken to one of the rooms, where they saw one of the suspects, Mr. R.A. When the author asked for an explanation as to why her son had to be taken to the Department of Internal Affairs, one of the officers replied that her son was a murderer. Then the author was requested to leave the room, whereas her son was escorted to yet another room for interrogation. Again, she was not allowed to see Mikhail and be present while he was interrogated. An *ex officio* lawyer, however, was present during the interrogation of the author's son. On the same day, the author was requested by the investigator, Mr. M.K., to be present during the confrontation between her son and both suspects, allegedly because of the inability of the *ex officio* lawyer to take part in the proceedings. As a result, the confrontation took place in the absence of a lawyer.

2.7 At around 9.30 – 10 p.m. on 30 October 1999, officers of the Department of Internal Affairs carried out a personal search of the author's son and seized a pair of yellow jogging shoes that he was wearing. The personal search and seizure of Mikhail's personal belongings took place in the absence of a lawyer and the author, in her capacity as her son's legal representative. The personal search report was signed only by Mikhail, the investigator and two identifying witnesses. On the same day, an officer of the crime detection unit, Mr. A.B., drew up a seizure report that was signed by him, Mikhail and two identifying witnesses, who, as transpired at a later stage, have never lived at the addresses indicated by them in the report in question. According to this report, a pair of 'jogging shoes, size 45, with yellow and blue inserts made of a leather-substitute and produced by "Sprandi" company' was seized from the author's son, packed and sealed. The author submits that the seizure of Mikhail's footwear was carried out by an officer of the crime detection unit in violation of the criminal procedure law, namely, in the absence of a written ordinance by the investigator and without indicating an exact time of the seizure. Furthermore, the author, as her son's legal representative, has never been provided with a copy of the personal search and seizure reports.

2.8 According to the material evidence examination report drawn up by the investigator, Mr. M.K., on 30 October 1999, a pair of 'jogging shoes of black-yellow-blue colour' was seized. The report did not mention, however, whether the seized footwear was packed and sealed. The author submits that, on 10 November 1999, the jogging shoes in question were added to the criminal case file as material evidence and the respective investigator's ordinance referred to them for the first time as 'jogging shoes "Sprandi" with the stains of reddish-brown colour'. She adds that all expert examinations in her son's criminal case, such as forensic psychiatric, narcomania and biological examination, have been carried out in the absence of a lawyer and herself, as Mikhail's legal representative. Mikhail himself was informed about the investigator's ordinance of 1 November 1999, requesting to carry out a biological examination of the seized jogging shoes, only on 6 December 1999. An investigator's ordinance of 5 November 1999, requesting that an additional biological examination of the seized jogging shoes be carried out, was made available to the author's son only on 26 December 1999.

2.9 On 31 October 1999, Mikhail was transferred to a temporary detention ward (IVS), where he was detained with adults, and then, on 2 November 1999, was taken back to the Department of Internal Affairs in order for a prosecutor to authorise a restraint measure to be imposed on him. During an encounter with the Deputy Prosecutor of the Sverdlovsk District, Mikhail and the two suspects complained about being subjected to physical pressure, which prompted the prosecutor to request a forensic medical examination. According to the forensic medical report of 3 November 1999, neither Mikhail nor the two suspects had any visible bodily injuries at the time of examination. According to the author's son, however, the medical examination in question was carried out by a doctor while all three of them remained fully dressed.

2.10 On 2 November 1999, a restraint measure was imposed on the author's son by the Deputy Prosecutor of the Sverdlovsk District and Mikhail gave a written undertaking not to leave his usual place of residence. Despite this fact, he was released only at around 10 p.m. on 3 November 1999. According to the author, her son was detained in the Department of Internal Affairs and the IVS for more than 72 hours without any legal grounds. While in detention, Mikhail had contracted an acute viral respiratory infection, and had to be treated at home for two weeks after his release. For fear of reprisals and further arrests of her son, the author decided not to complain about his unlawful detention which had exceeded 72 hours.

2.11 On 1 November 1999, that is, three days after the murder of D.M. and while the investigation was still on-going, a newspaper "Evening Bishkek" with country-wide

distribution published an article entitled 'Unchildish games' with a photograph of the author's son. Although the article did not refer to him by his family name, it did mention that 'a 14 year old Mikhail K., who was a classmate of D.M.' was arrested on suspicion of murder. The author submits that this information directly leads to the identification of her son, which, in turn, violates Rule 8 of United Nations Standard Minimum Rules for the Administration of Juvenile Justice.¹

2.12 On 4 November 1999, the author's apartment was searched by the investigator and three officers of the Department of Internal Affairs on the basis of a search warrant issued by the prosecutor. According to the search protocol, nothing was found in the apartment.

2.13 On 26 December 1999, the investigation into the death of D.M. was completed and the criminal case was transmitted to the prosecutor's office. The criminal case file contained a copy of the charge against the author's son, which was dated 26 December 1999 but authorised by the prosecutor only on 30 December 1999. The author submits that Mikhail was initially given a copy of this document that was dated 26 December 1999 and was not yet authorised by the prosecutor and then made to sign a backdated copy with the prosecutor's authorisation of 30 December 1999.

2.14 On 29 May 2000, Mr. U.A. and Mr. R.A. retracted their confessions in the court of first instance, the Sverdlovsk District Court of Bishkek, stating that they had had to testify against themselves and to implicate the author's son in the murder, because of the physical pressure exercised on them on 29 October 1999 by officers of the Department of Internal Affairs. The author submits that her son has consistently pleaded innocent throughout the pre-trial investigation and in court. The Sverdlovsk District Court of Bishkek heard oral testimonies of four officers of the Department of Internal Affairs, who stated that they had exerted no physical pressure on any of the defendants.

2.15 On 29 May 2000, the Sverdlovsk District Court of Bishkek acquitted the author's son of aggravated murder (article 97, part 2, paragraphs 6 and 15, of the Criminal Code), stating that his guilt had not been proven. The court took into account Mikhail's alibi, proven by witness statements of 22 individuals (including his teachers, classmates and a school principle), that, from 8 a.m. to 3.30 p.m. on 28 October 1999 he had been present in school, except for a ten-minute lunch break at 1 p.m. when he had gone home and was seen there by his mother; and that he had spent the rest of that day at a friend's place helping with the home repairs. The court also noted that Mikhail could not explain the origin of the blood stains on the jogging shoes that had been seized from him and concluded that 'no other evidence either proving him guilty of having committed the murder or exonerating him has been presented to the court'. The author's son was requested to give a written undertaking not to leave his usual place of residence prior to the judgment being effective.

2.16 On an unspecified date, the mother of the deceased and a Senior Aide to the Prosecutor of the Sverdlovsk District appealed against the judgment of the Sverdlovsk District Court of Bishkek of 29 May 2000 to the Judicial Chamber for Criminal Cases of the Bishkek City Court (Bishkek City Court). The prosecution requested that the author's son be found guilty on the basis of the testimony given by Mr. U.A. and Mr. R.A. during the pre-trial investigation and the existence of the blood stains on the jogging shoes that had

¹ Rule 8 (protection of privacy) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted by General Assembly resolution 40/33 of 29 November 1985:

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

been seized from him. Mikhail's lawyer refuted the arguments of the prosecution and recalled that Mr. U.A. and Mr. R.A. have subsequently retracted their confessions in court and that at the time of the seizure of the jogging shoes, there were no stains on them, let alone ones of reddish-brown colour. On 6 September 2000, the Bishkek City Court quashed the judgment of the Sverdlovsk District Court of Bishkek of 29 May 2000 and sent the case back to the same court for a retrial.

2.17 On 26 June 2001, the Sverdlovsk District Court of Bishkek requested an additional biological examination of the blood stains on the jogging shoes in order to establish the exact time they had appeared and whether their origin corresponded to the circumstances of the case. The author's son was requested to continue to respect his undertaking not to leave his usual place of residence.

2.18 On 19 December 2001, the Sverdlovsk District Court of Bishkek returned the criminal case to the prosecutor's office, for it to add to the criminal case file a certification, confirming that one of the co-accused, Mr. R.A., had already served an earlier sentence for murder, of which he had been convicted in the Russian Federation.

2.19 On 10 June 2002, the Sverdlovsk District Court of Bishkek found the author's son guilty of the aggravated murder of D.M. (article 97, part 2, paragraphs 6 and 15, of the Criminal Code) and sentenced him to 12 years' imprisonment (without the seizure of property) to be served in a juvenile colony. Mikhail was remanded into custody directly in the court room. The court based its judgment, *inter alia*, on the medical examination report of 3 November 1999 (see, paragraph 2.9 above) and did not take into account Mikhail's claims that he had been subjected to physical pressure and the numerous witness statements establishing his alibi. The court heard an oral testimony of an expert in biology, who stated that it was impossible either to confirm or definitely exclude that the blood stains on the jogging shoes belonged to the deceased. The court also referred to the report of the additional biological examination of the jogging shoes dated 23 July 2001 (see paragraph 2.17 above), according to which it was impossible to establish the exact time the blood stains had appeared due to the lack of 'reliable methodology'.

2.20 From 10 June 2002 to 29 August 2002, the author's son was detained at the investigation detention centre (SIZO-1) in a cell for juveniles. The cell was overcrowded and, due to the shortage of plank beds, inmates had to sleep in turns. Due to the high humidity and heat, the author's son, as the rest of the inmates, had to stay in the cell half-naked and was often sick.

2.21 On 14 June 2002, Mikhail's lawyer appealed the judgment of the Sverdlovsk District Court of Bishkek of 10 June 2002 to the Bishkek City Court. She argued, in particular, that:

a) Mr. U.A. and Mr. R.A. have retracted their confessions, stating that they had to testify against themselves and to implicate the author's son in the murder of D.M., because of the physical pressure exercised on them on 29 October 1999 by officers of the Department of Internal Affairs.

b) Mikhail's alibi is proven by witness statements of 22 individuals, including his teachers, classmates and a school principle, who saw him at school on 28 October 1999 at the time when the murder of D.M. had presumably been committed.

c) According to the self-incriminating testimonies of Mr. U.A. and Mr. R.A. and those implicating the author's son in the murder of D.M., given by them during the pre-trial investigation, Mikhail was strangling D.M. with an elbow, whereas a forensic medical expert heard by the Sverdlovsk District Court of Bishkek testified that a constriction mark on the deceased' throat could not have appeared from a strangulation by a hand or an elbow. The court, however, failed to clarify these conflicting testimonies.

d) According to the forensic biological examination, it could not be excluded that the blood stains found on Mikhail's jogging shoes belonged to D.M. The lawyer refers to the seizure report (see, paragraph 2.7 above), that was drawn up on the basis of a visual examination of the jogging shoes and does not mention any stains, let alone of reddish-brown colour. She also refers to an expert statement, according to which a blood group of the stains found on the jogging shoes could have matched with, aside from the deceased, some 20% of the population. Given the fact that the seizure of the jogging shoes was carried out two days after the actual detention of the author's son, the lawyer did not exclude the possibility that law-enforcement officers had tampered with the evidence and added blood from the clothes of the deceased to Mikhail's jogging shoes.

2.22 On 29 August 2002, the Bishkek City Court quashed the judgment of the Sverdlovsk District Court of Bishkek of 10 June 2002 and acquitted the author's son of the murder charge, stating that his guilt had not been established. Mikhail was released from custody directly in the court room. The court, *inter alia*, based its judgment on Mikhail's alibi that had not been refuted either by the prosecution or the court, and on its doubts related to the origin of the stains on the jogging shoes, given that the latter had been seized without any visible stains and then added to the criminal case file as evidence with the 'suddenly appeared stains of reddish-brown colour'.

2.23 On 21 October 2002, the Deputy Prosecutor of Bishkek appealed against the judgment of the Bishkek City Court of 29 August 2002 to the Supreme Court, requesting that it be reviewed through the supervisory review procedure. On 14 January 2003, the Supreme Court quashed the judgment of the Bishkek City Court of 29 August 2002 and sent the case back to the same court for a retrial. The Supreme Court requested the Bishkek City Court to verify, in particular, whether experts in biology could be more precise with regard to the origin of the stains on the jogging shoes and whether the time of death of D.M. and the specific role of each of the accused in his murder could be determined more thoroughly.

2.24 On 21 April 2003, the Bishkek City Court found the author's son guilty of the murder of D.M. and sentenced him to 8 years' imprisonment (without the seizure of property) to be served in a juvenile colony. Mikhail was taken into custody directly in the court room. This time, the court has established that the murder of D.M. had occurred between 3 and 4 p.m. on 28 October 1999, that the author's son deliberately appeared in public places on that day to provide himself with an alibi, and that he had strangled D.M. from behind with a clothesline.

2.25 On the same day, the Bishkek City Court issued a privy ruling with regard to the investigator Mr. M.K. and drew the attention of the authorities of the Ministry of Internal Affairs to the following violations of the procedural law that have been identified by the court in the present criminal case:

a) An officer of the crime detection unit, Mr. A.B., seized a pair of jogging shoes from a minor suspect in the absence of his legal representative and has not indicated in the seizure report that there were some stains on the seized footwear. According to the court, 'it gave a pretext to challenge the evidence collected' and resulted in the red-tape in the consideration of this criminal case by the courts.

b) The confrontation of the author's minor son with Mr. U.A. and Mr. R.A. on 30 October 1999, took place in the absence of their respective lawyers, even though 'their presence was necessary in this particularly serious crime'.

2.26 On 23 June 2003, Mikhail's lawyer appealed the judgment of the Bishkek City Court of 21 April 2003 to the Supreme Court, requesting that it be reviewed through the supervisory review procedure. On 15 October 2003, the Judicial Chamber for Criminal Cases and Administrative Offences of the Supreme Court quashed the judgment of the

Bishkek City Court of 21 April 2003 and sent the case back to the same court for a retrial. The court established that the judgment in question had been handed down in violation of article 352 of the Criminal Procedure Code, since the original of the judgment in question was initially signed by an unknown person and was subsequently altered with a signature of a judge who took part in the court hearing of the case.

2.27 On 30 December 2003, the Bishkek City Court acquitted the author's son of murder, stating that his participation in the commission of the crime has not been proven. Mikhail was released from custody directly in the court room.

2.28 On an unspecified date, the Prosecutor's Office appealed the judgment of the Bishkek City Court of 30 December 2003 to the Supreme Court, requesting that it be reviewed through the supervisory review procedure. On 26 August 2004, the Judicial Chamber for Criminal Cases and Administrative Offences of the Supreme Court quashed the judgment of the Bishkek City Court of 30 December 2003 and upheld the judgment of the Sverdlovsk District Court of Bishkek of 10 June 2002, that found the author's son guilty of having committed the murder of D.M. and sentenced him to 12 years' imprisonment (without the seizure of property) to be served in a juvenile colony. According to article 83 of the Constitution and article 382 of the Criminal Procedure Code, the ruling of the Judicial Chamber for Criminal Cases and Administrative Offences of the Supreme Court of 26 August 2004 is final and cannot be appealed. The court has not issued any decision as to whether the author's son should be remanded into custody directly in the court room. Mikhail has gone into hiding since then.

The complaint

3.1 The author claims that, in violation of article 7 and article 14, paragraph 3(g), her son and the other two co-accused, who had testified against Mikhail during the pre-trial investigation, were physically and psychologically pressured to testify against themselves and to confess guilt. She further submits that protracted and unconscionable court proceedings to which her minor son was subjected for almost five years, being acquitted three times and three times found guilty in the same criminal case, have had a negative impact on his studies, behaviour and societal development, and amounted to a form of psychological torture in violation of article 7 of the Covenant.

3.2 The author submits that her son's rights under article 9, paragraph 2, have been violated, since neither him nor her, as Mikhail's legal representative, were informed for more than 24 hours of the reasons for his arrest which took place on 28 October 1999.

3.3 The author argues that, contrary to the provisions of article 9, paragraph 3, her son was detained for more than 72 hours (from 10 a.m. on 30 October 1999 to 10 p.m. on 3 November 1999) without any legal grounds.

3.4 The author submits that the conditions of her son's detention in SIZO-1 from 10 June 2002 to 29 August 2002 (see, paragraph 2.20 above) amounted to a violation of article 10, paragraph 1, of the Covenant.

3.5 The author claims that her son's rights under article 14, paragraph 1, of the Covenant were violated, because the State party's courts were partial in the evaluation of his alibi, as well as of the crucial facts and evidence in his case.

3.6 She adds that her son's rights under article 14, paragraph 3(b), were violated, because most of the investigative actions in his case have been carried out in the absence of a lawyer. Given his minor age (14) and absence of a lawyer, he was effectively deprived of an opportunity to prepare for his defence and to present effective evidence.

3.7 The author further claims that article 14, paragraph 3(c), of the Covenant was violated, because court proceedings in her minor son's case lasted for almost five years

without any objective reasons for such a delay. She adds that Mikhail did not in any way obstruct the course of the proceedings, and no new evidence establishing his guilt or witnesses against him have been brought to the courts during this period. The author also refers to the Committee's General Comment No. 13,² according to which a guarantee of article 14, paragraph 3(c), relates not only to the time by which a trial should commence, but also the time by which it should end and judgement be rendered; all stages must take place "without undue delay". To make this right effective, a procedure must be available in order to ensure that the trial will proceed "without undue delay", both in first instance and on appeal.

3.8 The author claims that the practice of examining cases of juveniles by the State party's courts does not comply with the requirements of article 14, paragraph 4, of the Covenant. She submits that cases of juveniles are examined by the same judges who deal with the ordinary criminal cases, juveniles are seated behind metal bars during trial and are under escort of officers of the criminal corrections directorate.

3.9 The author claims a violation of article 17 of the Covenant, since a search warrant was issued by the prosecutor and not by the court (see, paragraph 2.12 above).

State party's observations on admissibility and merits

4. On 28 July 2005, the State party recalls the chronology of the facts as summarised in paragraphs 2.19, 2.22 – 2.24 and 2.26 – 2.28 above. It refers to the proposal by the Ministry of Internal Affairs to establish a commission consisting of the representatives of the General Prosecutor's Office, Supreme Court, Main Investigation Department of the Ministry of Internal Affairs and a lawyer representing the author's son, in order to ensure that decisions taken in Mikhail's case were appropriate and to hand down a legal decision in his regard (see, paragraph 6.1 below). The Ministry of Internal Affairs made such a proposal due to the 'numerous and contradictory court decisions' adopted in relation to the criminal charges brought against the author's son.

Author's comments on the State party's observations

5.1 On 14 October 2005, the author submits her comments on the State party's observations. She contends that the State party did not address any of the arguments she raised in the communication to the Committee. Instead, it confined itself to reiterating the chronology of the facts. The author draws the Committee's attention to article 384 of the Criminal Procedure Code, which allows the Supreme Court to review, on the basis of newly-discovered evidence, its own rulings that have already become effective.

5.2 The author states that, on 28 September 2004, 19 November 2004 and 13 January 2005, her son's lawyer filed motions to the General Prosecutor's Office, with the request to reopen proceedings in Mikhail's case on the basis of newly-discovered evidence. On 19 October 2004, 22 December 2004 and 10 February 2005, Mikhail's lawyer received written replies from the General Prosecutor's Office, informing him that there were no grounds to reopen proceedings in Mikhail's case on the basis of newly-discovered evidence. The author argues that, further to the requirements of articles 387 and 388 of the Criminal Procedure Code, the General Prosecutor's Office was supposed to reply to the lawyer's motions with a reasoned ruling rather than a mere written reply which has no value in judicial proceedings.

² Human Rights Committee, General comment No. 13: Article 14 (Equality before the courts and the right to a fair and public hearing by an independent court established by law), 1984 (HRI/GEN/1/Rev.8), paragraph 10.

5.3 On 3 May 2005, Mikhail's lawyer appealed the written reply of the Deputy Prosecutor General of 10 February 2005 to the Pervomai District Court of Bishkek. On 11 May 2005, the Pervomai District Court of Bishkek granted the lawyer's appeal and held that the letter of the Deputy Prosecutor General 'was not in conformity with the law' and sent the case file to the General Prosecutor's Office for a 'lawful decision' to be taken. On 27 May 2005, the Prosecutor of the Pervomai District appealed the decision of the Pervomai District Court of Bishkek of 11 May 2005 to the Bishkek City Court. On 23 June 2005, the Bishkek City Court rejected the prosecutor's appeal and upheld the decision of the Pervomai District Court of Bishkek of 11 May 2005. On 17 August 2005, the Deputy Prosecutor General appealed the decision of the Bishkek City Court of 23 June 2005 to the Supreme Court under the supervisory review procedure. On 5 September 2005, Mikhail's lawyer filed objections to the appeal of the Deputy Prosecutor General. At the time of submission of the author's comments, the Supreme Court had not yet adjudicated on the matter.

Additional information from the author

6.1 On 18 February 2011, the author submits additional information and draws the Committee's attention to the fact that an inter-ministerial commission referred to in the State party's observations on the merits of 28 July 2005 (see, paragraph 4 above) has not been established.

6.2 The author adds that, on 18 October 2005, the Judicial Chamber for Criminal Cases and Administrative Offences of the Supreme Court rejected the prosecutor's appeal submitted under the supervisory review procedure (see, paragraph 5.3 above) and upheld the decision of the Pervomai District Court of Bishkek dated 11 May 2005 and the ruling of the Bishkek City Court dated 23 June 2005. On 10 May 2006, the Deputy Prosecutor General decided to reopen proceedings in Mikhail's case on the basis of newly-discovered evidence. On 16 May 2006, the Deputy Prosecutor General submitted his findings to the Supreme Court with the request to quash the decision of the Pervomai District Court of Bishkek dated 11 May 2005, the ruling of the Bishkek City Court dated 23 June 2005 and the decision of the Judicial Chamber for Criminal Cases and Administrative Offences of the Supreme Court dated 18 October 2005, and to send the materials back to the Pervomai District Court of Bishkek for a new examination of the appeal submitted by Mikhail's lawyer in relation to the written reply of the Deputy Prosecutor General of 10 February 2005. On 4 July 2006, the Judicial Chamber for Criminal Cases and Administrative Offences of the Supreme Court quashed the decision of the Pervomai District Court of Bishkek dated 11 May 2005, the ruling of the Bishkek City Court dated 23 June 2005 and the decision of the Judicial Chamber for Criminal Cases and Administrative Offences of the Supreme Court dated 18 October 2005, and rejected the appeal submitted by Mikhail's lawyer in relation to the written reply of the Deputy Prosecutor General of 10 February 2005.

6.3 The author submits that, on 25 December 2007, the Judicial Chamber for Criminal Cases and Administrative Offences of the Supreme Court reduced her son's sentence from 12 to 10 years' imprisonment on the basis of an amendment to article 82 of the Criminal Code introduced on 25 June 2007. According to this amendment, which has a retroactive effect, a sentence for an individual who was below the age of 18 at the time of commission of the crime shall not exceed, for a particularly serious crime, 10 years' imprisonment.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of Procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. In the absence of any objection by the State party, the Committee considers that the requirements of article 5, paragraph 2(b), of the Optional Protocol have been met.

7.3 With regard to the author's allegations under article 9, paragraph 3; article 10, paragraph 1; article 14, paragraph 4; and article 17 of the Covenant, the Committee considers that she has not substantiated the claims, for the purposes of admissibility. It further remains unclear whether these allegations were raised at any time before the domestic courts. Hence, this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.4 As to the author's claim under article 7, that protracted and unconscionable proceedings to which her minor son was subjected for almost five years amounted to a form of psychological torture, the Committee notes that it relates primarily to issues directly linked to those falling under article 14, paragraph 3(c), of the Covenant, that is, the right to be tried without undue delay. It also notes that there are no obstacles to the admissibility of the communication under 14, paragraph 3(c), of the Covenant, and declares it admissible. Having come to this conclusion, the Committee decides that it is not necessary to separately consider the same claim under article 7 of the Covenant.

7.5 The Committee considers that the author has sufficiently substantiated the remaining claims under article 7; article 9, paragraph 2; article 14, paragraphs 1, 3(b), 3(c) and 3(g), of the Covenant, and declares them admissible.

Consideration of the merits

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

8.2 The Committee notes the author's allegations that her 14 year old son was beaten on his head and physically pressured by officers of the Department of Internal Affairs, for the purpose of extracting a confession from him, and that Mikhail identified in court the alleged perpetrators of these acts. The Committee also notes that these allegations had been examined by the courts and were found to be groundless on the basis of the medical examination report of 3 November 1999 (see, paragraphs 2.9 and 2.19 above) and testimonies of the alleged perpetrators, who stated that they had exercised no physical pressure on any of the defendants (see, paragraph 2.14 above). The Committee further notes that the author's son has disputed the conclusions of the medical examination report on the ground that the medical examination was carried out by a doctor while he and the other two co-accused were fully dressed. In this respect, the Committee recalls that once a complaint

about treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially.³

8.3 The Committee also recalls its jurisprudence⁴ that the burden of proof cannot rest alone on the author of the communication, especially considering that the authors and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to provide to the Committee the information available to it. The State party, however, did not provide any information as to whether any inquiry was undertaken by the authorities to address the detailed and specific allegations advanced by the author in a substantiated way. In these circumstances, due weight must be given to these allegations. The Committee considers, therefore, that the information contained in the file does not demonstrate that the State party's competent authorities gave due consideration to the complaints of the author's son about being subjected to physical pressure, and concludes that the facts before it amount to a violation of the rights of the author son's under article 7 of the Covenant.

8.4 In light of this conclusion and the author's own affirmation that her son has consistently pleaded innocent throughout the pre-trial investigation and in courts (see, paragraph 2.14 above) and, therefore, has not testified against himself or confessed guilt, the Committee does not consider it necessary to deal separately with the author's claim under article 14, paragraph 3(g), of the Covenant.

8.5 The Committee notes the author's claim that neither her son nor her, as Mikhail's legal representative, were informed of the reasons for his arrest which took place on 28 October 1999. The State party does not dispute this claim. For this reason, the Committee concludes that the rights of the author's son under article 9, paragraph 2, of the Covenant were violated.

8.6 The author has also claimed that her son's rights under article 14, paragraph 3(b), were violated, as most of the investigative actions in his case, particularly during the time when he was subjected to psychological pressure and when the crucial material evidence of the prosecution (the jogging shoes) had been seized from him, had been carried out in the absence of a lawyer. The Committee notes that these allegations were presented both to the State party's authorities and in the context of the present communication. In this regard, the Committee recalls that a privy ruling of the Bishkek City Court of 21 April 2003 specifically referred to the fact that the presence of a lawyer during the confrontation of the author's son with Mr. U.A. and Mr. R.A. 'was necessary in this particularly serious crime' (see, paragraph 2.25 above). In light of the recognition by the State party's own courts that the author's son was not represented by a lawyer during one of the most important investigative actions and given his particularly vulnerable situation as a minor, the Committee considers that the facts before it reveal a violation of the rights of the author's son under article 14, paragraph 3(b), of the Covenant.⁵

³ See, e.g., communication No. 781/1997, *Aliiev v. Ukraine*, Views adopted on 7 August 2003, paragraph 7.2. See also, Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of torture and cruel treatment or punishment), 1992 (HRI/GEN/1/Rev.8), paragraph 14.

⁴ Communication No. 30/1978, *Bleier v. Uruguay*, Views adopted on 24 March 1980, paragraph 13.3; Communication No. 84/1981, *Berbato et al. v. Uruguay*, Views adopted on 21 October 1982, paragraph 9.6.

⁵ See, for example *Kelly v. Jamaica*, communication No. 537/1993, Views adopted on 29 July 1997.

8.7 As to the claim under article 14, paragraph 3(c), of the Covenant, the Committee recalls⁶ that the right of the accused to be tried without undue delay is not only designed to avoid keeping persons too long in a state of uncertainty about their fate, but also to serve the interests of justice. What is reasonable has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities. A guarantee of article 14, paragraph 3(c), relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal.⁷ All stages, whether in first instance or on appeal must take place "without undue delay". The Committee notes that, in the present case, court proceedings lasted for almost five years during which the author's minor son was acquitted three times and three times found guilty on the basis of the same evidence, witness statements and testimonies of the co-accused. It further notes that none of the delays in the case can be attributed to the author or to his lawyers. In the absence of any explanation from the State party justifying a delay of almost five years between the formal charging of the author's minor son and his final conviction by the Supreme Court, the Committee concludes that the delay in his trial was such as to amount to a violation of article 14, paragraph, paragraph 3(c), of the Covenant.

8.8 In relation to the author's claim that the State party' courts were partial in the evaluation of her son's alibi, as well as of the crucial facts and evidence in his case, and that his guilt was not established, the Committee notes that the author points to many circumstances which she claims demonstrate that her son did not benefit from a right to a fair hearing by a competent, independent and impartial tribunal. The Committee recalls its jurisprudence that it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, or to examine the interpretation of domestic legislation by national courts and tribunals, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or amounted to a denial of justice.⁸ The Committee notes, however, that the State party's authorities have conceded that court decisions in the present case were 'numerous and contradictory' and even suggested the establishment of an inter-ministerial commission tasked with handing down a 'legal decision' in relation to the author's son. In light of the above and given the Committee's findings of a violation of article 7, and article 14, paragraphs 3(b) and 3(c), of the Covenant, the Committee is of the opinion that the author's son did not benefit from a right to a fair hearing, in violation of article 14, paragraph 1, of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by the State party of article 7; article 9, paragraph 2; and article 14, paragraphs 1, and 3 (b) and 3 (c), of the Covenant.

10. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author's son with an effective remedy, including a review of his conviction taking into account of the provisions of the Covenant, and appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.

⁶ See, Human Rights Committee General Comment No. 32: Right to equality before courts and tribunals and to a fair trial (article 14), U.N. Doc. CCPR/C/GC/32 (2007), paragraph 35.

⁷ See also, communication No. 1089/2002, *Rouse v. Philippines*, paragraph 7.4 and communication No. 1085/2002, *Taright, Touadi, Remli and Yousfi v. Algeria*, paragraph 8.5.

⁸ See, *inter alia*, communication No. 541/1993, *Errol Simms v. Jamaica*, Inadmissibility decision adopted on 3 April 1995, paragraph 6.3.

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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy 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 the Committee's Views.

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