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International Covenant on Civil and Political Rights

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HUMAN RIGHTS COMMITTEE
Ninety-eighth session
8 to 26 March 2010

Views

Communication No. 1338/2005

Submitted by:	Mr. Soyuzbek Kaldarov (represented by counsel, Mr. Amageldy Moldobaev and Mr. Salizhan Maitov)
Alleged victim:	The author
State party:	Kyrgyzstan
Date of the communication:	27 December 2004 (initial submission)
Documentation references:	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 10 January 2005 (not issued in document form)
Date of adoption of Views:	18 March 2010

* Made public by decision of the Human Rights Committee.

Subject matter:	Failure to bring a detained person before a judge and imposition of death penalty after unfair trial.
Substantive issues:	Right to life; torture, cruel, inhuman or degrading treatment or punishment; arbitrary detention; right to be brought promptly before a judge; right to take proceedings before a court; right to humane treatment and respect for dignity; presumption of innocence; right to be tried without undue delay; right to legal assistance; right not to be compelled to testify against oneself or to confess guilt.
Procedural issue:	Non-substantiation of claims
Articles of the Covenant:	6, paragraph 1; 7; 9, paragraphs 1, 3 and 4; 10, paragraph 1; 14, paragraphs 2, 3(c), (d) and (g)
Article of the Optional Protocol:	2

On 18 March 2010, 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. 1338/2005.

[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 (Ninety-eighth session)

concerning

Communication No. 1338/2005**

Submitted by:	Mr. Soyuzbek Kaldarov (represented by counsel, Mr. Amageldy Moldobaev and Mr. Salizhan Maitov)
Alleged victim:	The author
State party:	Kyrgyzstan
Date of the communication:	27 December 2004 (initial submission)

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

Meeting on 18 March 2010,

Having concluded its consideration of communication No. 1338/2005, submitted to the Human Rights Committee by Mr. Soyuzbek Kaldarov 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

1.1 The author of the communication is Mr. Soyuzbek Kaldarov, a Kyrgyz national born in 1976, who at the time of submission of the communication was detained on death row in Osh, Kyrgyzstan. He claims violations by Kyrgyzstan of his rights under article 6, paragraph 1; article 7; article 9, paragraphs 1, 3 and 4; article 10, paragraph 1; article 14, paragraph 2, 3(c), (d) and (g), of the International Covenant on Civil and Political Rights. The author is represented by counsel. The Optional Protocol entered into force for the State party on 7 January 1995.

1.2 Under rule 92 of its Rules of procedure, the Committee, acting through its Special Rapporteur for New Communications and Interim Measures, requested the State party, on

** The following members of the Working Group participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmed Amin Fathalla, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

10 January 2005, not to carry out the author's execution, pending the consideration of his case.

1.3 A moratorium on execution of the death penalty was initially introduced in Kyrgyzstan by a Presidential Decree, which entered into force on 8 December 1998. Since then, it has been extended on an annual basis. Presidential Decree of 30 December 2003, "On prolongation of the term of moratorium on execution of the death penalty in the Kyrgyz Republic", extended the moratorium until 31 December 2004. On 9 November 2006, Kyrgyzstan adopted a new Constitution, which abolished the death penalty. On 30 July 2009, the State party informed the Committee that on 17 December 2007, the Judicial Chamber for Criminal Cases of the Supreme Court of Kyrgyzstan had commuted Mr. Kaldarov's death sentence to life imprisonment.

The facts as presented by the author

2.1 On 7 March 1999, at approximately 2 a.m., the author was driving a third person's car with four acquaintances in the outskirts of Bishkek, when he was stopped by two traffic policemen. One of the passengers, K.A. ordered the author to ignore the policemen and to drive away at high speed. After a short pursuit, the car was blocked by the police vehicle. A fight ensued between the policemen, the author and three of the passengers who were in the car. In the course of the fight, one of the policemen fired a warning shot which prompted the author and the three passengers to return to the car and drive away. Shortly thereafter, K.A. ordered the author to turn around and to drive back to the policemen to take their pistol. Upon arrival, K.A. opened the car's boot and took out a sawn-off rifle. He shot one of the policemen dead at short range, seized that policeman's pistol and fired with it at the second policeman.

2.2 On 9 March 1999, the author and the other two passengers, A.M. and K.K, were arrested by law-enforcement officers. Upon arrest, they confessed to having committed a crime and testified about the role played by each of the participants in the incident in question. In particular, they unanimously identified K.A. as the murderer of both policemen and repeated this statement during verification of the testimony at the crime scene, which was videotaped. Subsequently, however, investigating officers conducted "a new investigation with the use of physical pressure", as a result of which a murder of one of the policeman was attributed to the author. The initial testimony given by A.M. and K.K. after arrest disappeared from the criminal case file and on an unspecified date, the author was charged with the murder of one of the policemen.

2.3 On 2 March 2000, the Pervomai District Court of Bishkek convicted the author on counts of banditry (article 230, parts 2 and 2, of the Criminal Code); illegal acquisition of a vehicle or another motor transport (article 172, part 3); illegal acquisition, transfer, dealing in, storage, transport or carrying of firearms, ammunition, explosive materials and explosive devices (article 241, part 3); illegal production or repair of firearms (article 242, part 1, clause 1); theft (article 164, part 3, clause 1); fraud (article 166, part 3, clause 3); use of force against a public agent (article 341, part 2); premeditated infliction of grave damage to health (article 104, part 3, clauses 1, 2 and 3); attempt on the life of a law-enforcement officer (article 340) and murder (article 97, part 2, clauses 1, 3-6, 10, 13-17). He was sentenced to death, with the seizure of his property.

2.4 On 13 June 2000, the author's cassation appeal against his conviction was dismissed by the Judicial Chamber for Criminal Cases of the Bishkek City Court. On 19 December 2000, the Supreme Court upheld the ruling of the Bishkek City Court through the supervisory review procedure. The author's request for a presidential pardon was rejected on 13 October 2001.

2.5 On 6 October 2004, A.M. filed a request with the Chairperson of the Supreme Court to have the author's conviction reviewed, in which he identified K.A. as the murderer of the two policemen on the date in question. He stated that he had been forced to change his initial testimony and to accuse the author of murder under pressure from law-enforcement officers.

The complaint

3.1 The author claims that his rights under article 9, paragraphs 3 and 4, were violated, because the first and second investigations were conducted in the absence of a court decision on the lawfulness of his detention. He further claims that, contrary to article 9, paragraph 3, the State party's law does not require that anyone detained on a criminal charge is brought promptly before a judge. Furthermore, he claims that if a person arrested or detained is brought before an officer other than a judge, this officer should be authorised by law to exercise judicial power and be independent in relation to the issues dealt with. The author's placement in custody was authorised by a prosecutor, who cannot be considered independent. The author also refers to the Committee's jurisprudence[1] that a delay of one week between the time of arrest and the time when the arrested person was brought before a judge in a capital case cannot be deemed compatible with article 9, paragraph 3, and that pre-trial detention of over 16 months in a capital case constitutes, in the absence of satisfactory explanations from the State party or other justification discernible from the file, a violation of the right, under article 9, paragraph 3, to be tried "within reasonable time" or to be released. The author submits that it would be ineffective to raise his claims under article 9, paragraph 3, before the domestic courts, because in the absence of relevant domestic law, the courts would be unable to enforce his rights guaranteed under article 9, paragraph 3, of the Covenant. Thus, there are no domestic remedies to exhaust for the claims under this provision of the Covenant.

3.2 The author claims that he is a victim of violations of article 9, paragraph 1, and article 14, paragraph 3(d), because he was assigned a lawyer on 16 March 1999, that is, seven days after his arrest. Under article 100, part 1, of the Criminal Procedure Code, anyone arrested on suspicion of having committed a crime, shall be interrogated in the presence of a lawyer. Under article 216, part 1, of the Criminal Procedure Code, charges shall be presented in the presence of a lawyer. Under article 46 of the Criminal Procedure Code, participation of a lawyer in criminal proceedings is mandatory if (1) it was requested by the suspect, accused or defendant and […] (5) a person is suspected or accused of having committed a particularly serious crime. According to article 13 of the Criminal Code, particularly serious crimes are premeditated crimes punishable by more than 10 years' imprisonment or death penalty. The author claims that from the moment of his arrest, he was suspected of having committed a crime punishable by death and, therefore, he should have been provided with a lawyer from the moment of his arrest. Contrary to this requirement, he was arrested, interrogated and charged with having committed a particularly serious crime in the absence of a lawyer.

3.3 The author maintains that he is a victim of violations of article 14, paragraph 2, and article 14, paragraph 3(g), arguing that in finding him guilty of the crimes charged, the State party's courts relied primarily on his accomplices' testimony obtained under pressure from law-enforcement officers. He submits that he testified in court about the existence of an earlier testimony by his accomplices, exonerating him from responsibility for murdering the policemen. The court, however, interpreted all discrepancies in favour of the

[1] Communication No. 702/1996, *McLawrence v. Jamaica,* Views adopted on 18 July 1997, paragraph 5.6.

prosecution, thus shifting the burden of proof to the accused. The author submits that he raised these issues before the domestic courts but "as they were not reflected in the respective trial transcripts, all available domestic remedies have been exhausted".

3.4 The author also claims a violation of his rights under article 7 and article 10, paragraph 1, because while he was detained in a temporary detention facility (IVS) he was beaten up on a few occasions by law-enforcement officers to force him to "start testifying against himself". He submits that although both he and A.M. made complaints on this issue during the trial, they were not taken into account. Furthermore, the author submits that while on death row, he has contracted numerous diseases, including tuberculosis, and that one of his accomplices, K.A. died of tuberculosis in the same prison cell. Contrary to the State party's obligation to guarantee equal access to medical services without any discrimination based on the inmates' legal status, the author was not provided with proper medical assistance. He also refers to the Committee's jurisprudence,[2] establishing that the wording of article 14, paragraph 3 (g), must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. Therefore, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession.

3.5 The author further claims that article 14, paragraph 3(c), was violated, because he was arrested on 9 March 1999 but court proceedings started only in March 2000 and finished in December 2000. Therefore, he was waiting for judicial examination of his case for more than one and a half years, in clear violation of this provision of the Covenant. He refers to the Committee's jurisprudence,[3] establishing that a substantial delay between indictment and trial cannot be explained exclusively by a complex factual situation and protracted investigations. The author also refers to the Committee's General Comment No. 13,[4] 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.

3.6 Finally, the author invokes a violation of article 6, paragraph 1, because he was sentenced to death upon the conclusion of a trial in which the provisions of the Covenant have not been respected. He refers to the Committee's jurisprudence,[5] confirming that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal.

State party's observations on admissibility and merits

4.1 On 4 March 2005, the State party submits that the author's guilt was proven by case file materials, including the testimony of his accomplices A.M., K.K. and K.A, witnesses' testimonies, the author's own letter addressed to K.A., in which Kaldarov was asking his

[2] Communication No. 253/1987, *Kelly v. Jamaica,* Views adopted on 8 April 1991, paragraph 5.5.
[3] Communication No. 473/1991, *Del Cid Gómez v. Panama,* Views adopted on 19 July 1995, paragraph 8.5.
[4] 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] *Kelly v. Jamaica*, supra n.2, paragraph 5.14.

accomplice K.A. to take responsibility for the murder of the two policemen, crime scene reports, reports on the seizure of the sawn-off rifle and pistol, reports on examination of the author's clothes, conclusions of forensic experts, ballistic and biological examinations.

4.2 The State party submits that there were no violations of the criminal procedure during the investigation of the author's case and his trial. The court objectively evaluated the evidence and legally qualified the author's actions correctly. When imposing the punishment, the court took into account public danger and the severe consequences of the crime committed by the author.

4.3 As to the alleged violations of criminal procedure law, which, according to the author took place during the investigation, the prosecution authorities promptly conducted a procedural enquiry and, in the absence of any violations, the Pervomai District Court of Bishkek handed down its judgment. This judgment was subsequently upheld by the Bishkek City Court and the Supreme Court.

4.4 Finally, the State party submits that the moratorium on execution of the death penalty was extended by the Presidential Decree of 10 January 2005 until 31 December 2005.

Author's comments on State party's observations

5.1 On 17 February 2009, the author submits that in its observations on admissibility and merits, the State party failed to address any of the claims advanced in his initial complaint. The State party merely stated that the prosecution authorities promptly conducted a procedural enquiry without giving answers to such questions as when he was arrested and brought before a judge, when he was assigned a lawyer, what happened to his accomplices' initial testimony and why his accomplice K.A. died in custody of tuberculosis. In the author's opinion, a failure by the State party to provide concrete information in reply to his allegations proves that the violations in question indeed took place.

5.2 The author submits that the only positive development in the State party of relevance to his case is an adoption of Law No. 91 of 25 June 2007, introducing changes and amendments to the Criminal and Criminal Procedure Codes, according to which death penalty was substituted by life imprisonment.

Additional submissions by the State party

6.1 On 30 July 2009, the State party submits that the author, together with the three other accomplices, was arrested on 9 March 1999 on the basis of article 426 of the 1960 Criminal Procedure Code, on the suspicion of having committed a murder of two persons on 7 March 1999. His arrest is documented by the report available in the case file materials. The same day, the author was assigned a lawyer, Mr. S. Sharsheev, by a senior investigator of the Bishkek City Prosecutor's Office, and all subsequent legal proceedings in the author's case were carried out in the presence of his lawyer.

6.2 On 12 March 1999, the author was charged with murder (article 97, part 2, of the Criminal Code); concealing a crime (article 339, part 2) and illegal acquisition, transfer, dealing in, storage, transport or carrying of firearms, ammunition, explosive materials and explosive devices (article 241, part 2). The same day, his placement in custody was authorised by the Bishkek City Persecutor. On 3 May 1999, the pre-trial investigation was extended until 7 June 1999 on the basis of the investigator's request. On 31 May 1999, the pre-trial investigation and the author's detention were extended until 7 July 1999. On 28 June 1999, the pre-trial investigation and the author's detention were extended until 7 August 1999.

6.3 On 14 August 1999, the author's case was transmitted to the Bishkek City Prosecutor for approval and subsequent transfer to the court. On 18 August 1999, the case was transferred to the Pervomai District Court of Bishkek for examination. On 9 September 1999, a judge of the Pervomai District Court of Bishkek remitted the case back to the Bishkek City Prosecutor for clarifications on the investigation. On 15 September 1999, the author's detention was extended until 24 September 1999 with the authorisation of the Bishkek City Prosecutor.

6.4 On 20 September 1999, the author's case was transmitted to the Bishkek City Prosecutor for approval and subsequent transfer to the court. On 23 September 1999, the case was transferred to the Pervomai District Court of Bishkek for examination but the court proceedings were postponed on numerous occasions due to the victims and witnesses' failure to appear before court and due to the defendants' requests for the replacement of their lawyers.

6.5 The State party reiterates that the author was assigned a lawyer from the day of his arrest and that the lawyer took part in all legal proceedings in his case. Extension of the author's detention and pre-trial investigation, as well as the presentation of charges against him were carried out in full compliance with the State party's criminal and criminal procedure law. Finally, the State party draws the Committee's attention to article 382 of the Criminal procedure Code, according to which decision of the Supreme Court are final and not subject to appeal.

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 communication 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 and notes that the State party has not contested that domestic remedies have been exhausted.

7.3 The Committee notes the author's allegations under article 7 and article 14, paragraph 3(g), concerning beatings to force him to "start testifying against himself". It also notes that the State party has not submitted any specific observations on this matter. The Committee observes, however, that the author's allegations are very broadly worded. He does not provide any information on when and where these beatings are supposed to have taken place, how often and for what duration. He provides no specific description of either the methods of the beatings, or of the identity or description or number of officers allegedly responsible, nor indeed of any consequences, medical or otherwise, resulting from the alleged treatment. No corroborating medical certificate attesting to ill-treatment of any kind has been submitted. The Committee also notes that despite the author's claim that his treatment contrary to article 7 and article 14, paragraph 3(g), was raised by him before the domestic courts, no mention of this issue appears in the copies of any court documents provided by the author to the Committee. In these circumstances, the Committee considers that the author has not substantiated this allegation sufficiently for purposes of admissibility, and finds this part of the communication inadmissible under article 2 of the Optional Protocol.

7.4 The Committee notes the author's claim that his rights under article 9, paragraph 1, and article 14, paragraph 3(d), were violated, because he was assigned a lawyer only seven

days after being arrested and, as a result, he was arrested, interrogated and charged with having committed a particularly serious crime in the absence of a lawyer. In light of the State party's counterclaim, which remains uncontested by the author, that he was represented by a lawyer from the day of his arrest on 9 March 1999, the Committee considers that this part of the communication is inadmissible as insufficiently substantiated for purposes of admissibility under article 2 of the Optional Protocol.

7.5 The Committee notes that the author claims, without providing further details, that he was deprived of his right under article 9, paragraph 4. In the absence of any other pertinent information in this respect, it considers that this part of the communication is inadmissible under article 2 of the Optional Protocol, as insufficiently substantiated.

7.6 The author claims that while on death row, he contracted numerous diseases, including tuberculosis, and that contrary to the State party's obligation under article 10, paragraph 1, he has not been provided with proper medical assistance. The Committee notes, however, that the material before it does not allow it to establish the state of the author's health before and during his detention on death row. It further remains unclear whether these allegations were raised at any time before the domestic courts. In these circumstances, the Committee considers that this part of the communication is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

7.7 The Committee notes the author's allegations under article 14, paragraph 2, concerning the manner in which the courts handled his case. It observes, however, that these allegations relate primarily to the evaluation of facts and evidence by the State party's courts. It recalls[6] that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice. In the present case, the Committee considers that given the absence in the case file of a trial transcript of the first instance court, the author's cassation and supervisory review appeals, or other similar information which would have enabled the Committee to verify whether the trial in fact suffered from such defects, this part of the communication is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

7.8 As to the author's claim under article 14, paragraph 3(c), concerning the alleged unreasonable delay of one year and nine months between his arrest on 9 March 1999 and the Supreme Court's decision on his supervisory review appeal on 19 December 2000, the Committee notes that official charges were brought against the author on 12 March 1999 and that he was convicted on 2 March 2000. The Committee observes that the author has not presented sufficient information to indicate why he considers this delay excessive. In the light of the information before the Committee, it finds that this claim is insufficiently substantiated and therefore declares it inadmissible under article 2 of the Optional Protocol.

7.9 Concerning the author's allegations under article 6, paragraph 1, the Committee notes that on 17 December 2007, the Judicial Chamber for Criminal Cases of the Supreme Court commuted his death sentence to life imprisonment. In the light of the above and

[6] See, *inter alia*, Communication No. 541/1993, *Errol Simms* v. Jamaica, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2; Communication No. 1188/2003, *Riedl-Riedenstein et al. v. Germany*, Inadmissibility decision adopted on 2 November 2004, paragraph 7.3; Communication No. 886/1999, *Bondarenko v. Belarus*, Views adopted on 3 April 2003, paragraph 9.3; Communication No. 1138/2002, *Arenz et al. v. Germany*, Inadmissibility decision adopted on 24 March 2004, paragraph 8.6. See also, 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 26.

given that the author's allegations under article 6 are based exclusively on his claims under article 14, none of which the Committee considers sufficiently substantiated for the purposes of admissibility, this part of the communication is therefore also inadmissible under article 2 of the Optional Protocol.

7.10 The Committee considers that the author's remaining claim under article 9, paragraph 3, of the Covenant, has been sufficiently substantiated, for purposes of admissibility, and proceeds to its examination on the merits.

Consideration of the merits

8.1 The Human Rights 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, paragraph 1, of the Optional Protocol.

8.2 The Committee notes the author's claim, which is factually supported by what the State Party has submitted from the case file (cf. paras. 6.2.-6.3) that, as his placement in custody was authorised by a prosecutor, who cannot be considered independent, his rights under article 9, paragraph 3, of the Covenant, have been violated. In this respect, the Committee recalls its jurisprudence[7] that paragraph 3 of article 9 entitles a detained person charged with a criminal offence to judicial control of his/her detention. It is generally admitted in the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. In the circumstances of the case, the Committee is not satisfied that the public prosecutor can be characterized as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3, and concludes that there has been a violation of this provision.

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 therefore of the view that the facts before it disclose a violation of the author's right under article 9, paragraph 3, 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 with an effective remedy, in the form of appropriate compensation, and to make such legislative changes as are necessary to avoid 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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

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

[7] See, *inter alia*, Communication No. 1348/2005, *Ashurov v. Tajikistan*, Views adopted on 20 March 2007, paragraph 6.5; Communication No. 521/1992, *Kulomin v. Hungary*, Views adopted on 22 March 1996, paragraph 11.3; Communication No. 1218/2003, *Platonov v. Russian Federation*, Views adopted on 1 November 2005, paragraph 7.2.