



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-sixth session
13 to 31 July 2009

DECISION

Communication No. 1877/2009

<u>Submitted by:</u>	Mr. S.B. (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Kyrgyzstan
<u>Date of communication:</u>	29 September 2008 (initial submission)
<u>Date of adoption of decision:</u>	30 July 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Alleged refusal by State party administration to provide public information.

Procedural issues: Level of substantiation of claim.

Substantive issues: Freedom of expression/ right to receive information.

Articles of the Covenant: article 2, paragraph 3; article 19, paragraph 2 (a).

Article of the Optional Protocol: 2.

[Annex]

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS

Ninety-sixth session

concerning

Communication No. 1877/2009*

Submitted by: Mr. S.B. (not represented by counsel)
Alleged victim: The author
State party: Kyrgyzstan
Date of communication: 29 September 2008 (initial submission)

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

Meeting on 30 July 2009,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The author of the communication dated 29 September 2008 is Mr. S. B., a Kyrgyz national and human rights defender, born in 1979. He claims to be a victim of violation, by Kyrgyzstan, of his rights under article 2, paragraph 3 (a), and article 19, paragraph 2, of the International Covenant on Civil and Political Rights. The author is not represented.

1.2 The Optional Protocol entered into force for the State party on 7 January 1995.

The facts as presented by the author

2.1 In April 2007, the author requested the Legal Department of the Ministry of Justice of Kyrgyzstan to provide him with information on the number of death sentences pronounced in Kyrgyzstan between 9 November 2006 and 30 March 2007, as well as the names of the courts and the judges who had imposed such sentences. The author explains that he wanted to obtain

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Mohammed Ayat, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

this information because a new Constitution proclaiming the prohibition of death penalty had been adopted on 9 November 2006. For him, “it was particularly important to know” the number of persons sentenced to death penalty after the death penalty was abolished under the new Constitution.

2.2 On 10 May 2007, the Legal Department refused to provide him the requested information, on the basis that such statistics were produced for internal use only. In May 2007 (exact date not provided), the author complained against this refusal to the Bishkek Inter-district Court. On 13 September 2007, during the consideration of his case in court, the Legal Department provided information on the general number of persons sentenced to death penalty for the fourth quarter of 2006 and the first quarter of 2007. On 14 September 2007, the Bishkek Inter-district Court held that the Legal Department had to satisfy the author’s request partly, and had to provide him with the information given by the Legal Department for the fourth quarter of 2006 (7 death sentences) and the first quarter of 2007 (3 death sentences). The author declared that he was not satisfied, because his request referred specifically to the period from 9 November 2006 to 30 March 2007, and he received no information on the courts that had handed down death sentences. According to him, the Court’s decision thus constituted *de facto* a denial of his request for information.

2.3 On 23 October 2007, author’s counsel filed an appeal against the Bishkek Inter-district Court in the Bishkek City Court, requesting the Legal Department to be obliged to provide comprehensive answer to his questions. On 21 November 2007, the Bishkek City Court confirmed the decision of the Bishkek Inter-district Court.

2.4 On 17 January 2008, the author’s counsel submitted an application for supervisory review with the Supreme Court, requesting the annulment of the previous court decisions. On 10 April 2008, the Supreme Court upheld the previous decisions in the author’s case.

The complaint

3. The author refers to article 14 of the Kyrgyz Constitution, pursuant to which everyone has the right to “*freely collect, store, and use information and disseminate it orally, in written or any other form*”. He adds that on 23 January 2007, the Kyrgyz Parliament adopted a Law “On the access to information available to governmental authorities and local-government institutions”. According to the provisions of this law, disclosure of information classified only as “top secret”, “secret”, or “confidential” is subject to restrictions. Information about death penalty sentences does not fall under any of these categories, and thus the author’s rights under articles 2, paragraph 3 (a) and 19, paragraph 2, were violated by the State party.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 Pursuant to rule 93 of its rules of procedure, before considering any claim contained in a complaint, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the Covenant on Civil and Political Rights.

4.2 The Committee notes that in the present case, the author has sought information from the Kyrgyz administration in relation to the exact number of death sentences, by court, pronounced

after the adoption, in 2006, of the new Constitution abolishing the capital punishment. It notes that the author has not explained why exactly he, personally, needed the information in question; rather, he contended that this was a “matter of public interest”. Under these circumstances, and in the absence of any other pertinent information, the Committee considers that the present communication constitutes an *actio popularis* and that therefore it is inadmissible under article 1 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 1 of the Optional Protocol;
- (b) That the decision be transmitted to the State party and to the author.

[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.]
