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International and Business Law Department

Senior Thesis

Interaction of Human Rights Protection in the Kyrgyz Republic and United Nations

Human Rights Committee under ICCPR

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Abstract

The senior graduation paper is devoted to identify whether are any problems in human rights protection in the Kyrgyz Republic and human rights protection in United Nations Human Rights Committee. The research was made on analysis of legislation of the Kyrgyz Republic on human rights protection, including the comparative analysis with the United Nations Human Rights Committee to identify the interaction of two mechanisms of human rights protection. It was identified that there is an interaction of the human rights protection between the Kyrgyz Republic and the United Nations Human Rights Committee. This research attached all necessary steps and levels of interaction. Moreover, the problematic aspects of the interaction were reflected in the research. In conclusion there are recommendations to improve and change legislation of the Kyrgyz Republic on the human rights protection.

Introduction

The issue of human rights is universal in nature and involves cooperation between national and international organizations. A civilized society and the rule of law are reliable guarantors of the promotion and protection of human rights.¹

In current days the need of legal knowledge has increased in the society. It is determined by economic, social and political processes that occur in the modern life in the Kyrgyz Republic. The success of these processes mostly depends on the level of legal awareness of the citizens of our country. People should know the rights and should respect them. Every citizen has to know and understand laws, duties and rights which are present in the society.

Human rights are the main landmark of the world democratic community, so that is why their recognition, observance and protection are the duty of our State. Human rights acquired a truly global impact. In its display they have become an indicator of civilized States and parameter of well-being of the citizens. In other words, they became a source of solutions of social and personal problems.²

The bases of human rights are reflected in the Universal Declaration of the Human Rights which was adopted by the UN General Assembly on 10 December 1948.³ The Universal Declaration of Human Rights - is the most important international document defining human rights as all human beings from birth, regardless of their sex, color, ethnicity, religion or sexual identity.⁴

It contains the Bill of the human rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, Optional Protocol I, II. All mentioned documents include the most important and basic norms in accordance with a lot of declarations and conventions. These treaties prevent the violations of the human rights in different spheres. Moreover, each of them separately regulates the protection on specific issues. Kyrgyz

¹ Human Rights advisory board. 2011. page 79

² National Program "Human Rights" (2002-2010) , page 1.

³ United Nations. Universal Declaration of Human Rights. History of the document.

<http://www.un.org/en/documents/udhr/history.shtml>

⁴ Women support centre. International documents on human rights. <http://www.wsc.kg/90>

Republic also ratified a huge number of international treaties and acts which regulate the protection of human right on the international level.

Human rights – it is normatively structured elements which express freedom, they are integral and necessary means in everyone’s life. Moreover, human rights regulate relations with government, society and other individuals which are around us. No one in the world has a right to violate the human rights which were given to each person from the birth. Furthermore, accordingly to all treaties and legal document regulating human rights protection issues, it is stated that these rights must be secured and protected.

Human rights:

- define the scope of personal freedom, autonomy and self-determination;
- organize and coordinate public communication and relationships;
- outline the borders of the State by preventing unjustified state intrusion into the sphere of personal freedom, putting obstacles arbitrariness of State structures;
- determine the parameters of human relationship and State responsibility, the latter for his activities to the individual and society;
- provide stability, sustainable community development, and its normal activities on the basis legal forms of human interaction.⁵

One of the most important tasks for each country, particularly for the Kyrgyz Republic is development and perfection of the legislation, which identifies the legal status of individuals, their rights and freedoms. An essential step in this direction was the adoption of the Constitution of the Kyrgyz Republic which was adopted in 1991.⁶ It contains a list of the rights and freedoms of the individual, meets international legal standards and the necessary conditions of normal activity that expresses the individual and society.

The human rights have great power in all spheres and can never be restricted. Thus, human rights should carry a powerful meaning and all people and the whole society must support them.

⁵ National Program “Human Rights.” (2002-2010), page 1.

⁶ The Constitution of the Kyrgyz Republic.

Society can help people to get the protection and justice. Respect and protection of human rights – is a foundation on which the political culture and society must be built. The promotion and protection of human rights are the necessary conditions for the proper functioning of all existing systems – political, economic, social, environmental, etc. Human rights protection is the ultimate objective and the main result of the development of democratically-oriented legal values.⁷

The Constitution has supreme legal force and direct effect in the Kyrgyz Republic. On the basis of the Constitution adopts constitutional laws, laws and other normative legal acts. In the procedure established by law, international treaties and agreements to which the Kyrgyz Republic is a participant, and the generally recognized principles and norms of international law are an integral part of the legal system of the Kyrgyz Republic.⁸

⁷ N.A. Malaeva. “ Constitutional and legal guarantees of human rights in the Kyrgyz Republic.” Herald KRSU. Volume 2008. № 2.1 page 74-75

⁸ The Constitution of the Kyrgyz Republic. 27 of June 2010. Article 6

Chapter I

National System of human rights protection in Kyrgyz Republic

Human rights are those rights which are inherent from birth.⁹ There are many human rights and they are all interconnected with each other. No one can violate or deprive these rights. Human rights should be protected on national and international levels. Human rights should not be limited by anyone including government. They should be respected and should not be violated. The protection of human rights is assigned to the state. State authorities are obliged to provide protection to every person.

The Kyrgyz Republic is a democratic country. The president of the Kyrgyz Republic and the Parliament of the Kyrgyz Republic, which are elected by the people, are entitled to act on behalf of the people of the Kyrgyz Republic. Jogorku Kenesh is the parliament which creates the mechanism and responsible for ensuring effective implementation of human rights. One example is the adoption of the basic acts – criminal code, civil code, labour code, code on administrative liability. These codes were adopted to regulate and partly protect human rights in different spheres of law.

Human rights are the main landmark of the world democratic community, so their recognition, observance and protection are the responsibility of each State. Human rights and freedoms should be ensured in the relevant National legislation of the Kyrgyz Republic because these rights are natural and fundamental to any human being. There is a supreme law in each country including the Kyrgyz Republic is the Constitution which has a judicial power. It is divided into several different parts. There is a specifically part II of the Constitution which protects human rights.¹⁰ It is include all human rights and freedom which are highest values of the constitutional State and civil society. According to article 16 of the Constitution, the Kyrgyz Republic respects and provides protection of

⁹ The Constitution of the Kyrgyz Republic.27 of June 2010. Article 21

¹⁰ Ibid

human rights to all people who are on the territory and under its jurisdiction.¹¹ It means that everyone on the territory of the Kyrgyz Republic has a protection by the State.

In accordance with article 16 of the Constitution of the Kyrgyz Republic, all citizens of the Kyrgyz Republic have the right to protection of their rights and freedoms, irrespective of national or social origin, sex, race, nationality, language, faith, political or religious convictions or any other considerations or circumstances of a personal or public nature.¹² The essential principles and priorities of the Government activity in the field of human rights are enshrined in the Constitution of any State.

The provisions of the Constitution which establish and guarantee the rights and freedoms of person and citizens are in regulations made by the public authorities.¹³ Human rights recognized as absolute and inalienable, determine the meaning and content of the legislative, Executive or local authorities are protected by law and the courts.”¹⁴

There are multiple areas in the realization of legal safeguards and protection of rights and freedoms:

- system of safety and protection of the rights and freedoms to ensure their effective use;
- system of safety and protection of the rights and freedoms in the fight against violations;
- development of public organizations to protect and defend the rights of person and citizen.¹⁵

The Constitution of the Kyrgyz Republic shall be the basic law effectively implements the fundamental requirements of a democratic society. It is the supreme law of human rights protection but there are several other organizations which regulate and protect human rights. These organizations should actively help to create in society a deep respect for the rights of the individual through legal, organizational and ethical measures.

Kyrgyz Republic has organization which regulates human rights protection called Ombudsman. The Ombudsman of the Kyrgyz Republic monitors the observance of the constitutional

¹¹ Ibid. Article 16.

¹² The Constitution of the Kyrgyz Republic. 27 of June 2010. Article 16

¹³ N.A. Malaeva. “Constitutional and legal guarantees of human rights in the Kyrgyz Republic.” Herald KRSU. Volume 2008. № 2.1

¹⁴ Ibid

¹⁵ ibid

rights and freedoms of individuals and citizens in the territory within its jurisdiction. The Ombudsman is guided by the Constitution, laws of the Kyrgyz Republic and the international treaties and agreements, as well as the generally recognized principles and norms of international law.¹⁶

The Ombudsman occupies an important place in the system of monitoring of the Administration, effectively protecting the rights of individuals. Its content and activities have opened a new chapter in relations between the State and the citizen, between the individuals entrusted with power, and managed. This Institute is fairly considered as an important factor in strengthening the rule of law and the legal framework of the activities of the Executive branch.¹⁷

Moreover, in a legal sense of the Ombudsman is understood as an independent trust worthy person authorized by Parliament to protect the rights of individuals and mediated in the form of parliamentary control of extensive oversight of all public officials, but without the right to change their decisions. The Ombudsman, therefore, should be seen as complementary and not alternative remedy in other government mechanisms to implement these activities.¹⁸ Thus, Ombudsman works in human rights protecting except other national mechanism.

The Ombudsman at his own expense should contribute to the recovery of violated rights, improvement of the legislation of the Kyrgyz Republic on the human rights and the citizen. Moreover, bring it in accordance with the generally recognized principles and norms of international law, the development of international cooperation in the field of human rights, legal education on issues of human rights and freedoms, forms and methods of their protection.¹⁹

The main aim of Ombudsman of the Kyrgyz Republic:

- Protection of human and civil rights and freedoms proclaimed in the Constitution and laws of the Kyrgyz Republic, international treaties and agreements ratified by the Kyrgyz Republic;
- Prevention of violation of human and civil rights and freedoms or support their recovery;

¹⁶ Toktom student. Law on Ombudsman of the Kyrgyz Republic. Chapter I, article 1,2.

<http://student.toktom.kg/document.phtml?st=doc&code=30918&lang=rus&ctx=%C7%C0%CA%CE%CD*%20%CE%C1*%20%CE%CC%C1%D3%C4%D1%CC*%20%CA%D0*#scroll0>

¹⁷ Paragraph. The legal status of the Ombudsman in the Kyrgyz Republic.

<http://online.adviser.kg/Document/?doc_id=30280159>

¹⁸ Ibid

¹⁹ History of the creation of the Ombudsman in the Kyrgyz Republic.

<<http://www.ombudsman.kg/en/aboutus/history.html>>

- Contribute to bring the legislation of the Kyrgyz Republic on the rights and freedoms of individuals and citizens in line with the Constitution and international standards in this area;
- Improvement and further development of international cooperation in the field of protection of human and civil rights and freedoms;
- Prevention of any forms of discrimination on the realization of human rights and freedoms;
- Promoting legal awareness and protection of confidential information about a private person.²⁰

One of the main ways to implement an Ombudsman of their monitoring functions is to process complaints. The Ombudsman examines applications and complaints of citizens of the Kyrgyz Republic which are located in the Kyrgyz Republic, foreign citizens and stateless persons, non-governmental organizations.²¹ Citizenship, race, nationality, religious or political beliefs, place of residence, gender, minority, the subject's incompetence cannot be an obstacle in the Ombudsman's competence.

The Ombudsman regulates relations which are on the territory of the Kyrgyz Republic but also with people who are abroad. The main aim is to protect people and human rights. It has power to connect with national government and also with international countries. Thus, the Institution of Ombudsman interacts and collaborates with national legislation (including the Constitution of the KR and other normative legal acts, laws) and international treaties, in which Kyrgyz Republic is a party.²²

Furthermore, the Ombudsman publishes annual report which describes the status and position of human rights protection under the Ombudsman's activity. This report is sent to the Parliament "Jogorku Kenesh" of the Kyrgyz Republic for review. All major problems and propositions attached in those reports. Report helps the Parliament to review and acquainted with the work of the Ombudsman's institute. Learn major points which were solved and decided by the Ombudsman's side. Moreover, report includes recommendations to amendments in national legislation.²³

²⁰ Toktom student. Law on Ombudsman of the Kyrgyz Republic. Chapter I, article 3
<http://student.toktom.kg/document.phtml?st=doc&code=30918&lang=rus&ctx=%C7%C0%CA%CE%CD%20%CE%C1%20%CE%CC%C1%D3%C4%D1%CC%20%CA%D0*#scroll0>

²¹ Web site of the Ombudsman in the Kyrgyz Republic. History of the creation of the Ombudsman in the Kyrgyz Republic <<http://www.ombudsman.kg/en/aboutus/history.html>>

²² The legal status of Ombudsman in the Kyrgyz Republic <http://online.adviser.kg/Document/?doc_id=30280159>

²³ Web site of the Ombudsman in the Kyrgyz Republic. History of creation of the Ombudsman in the Kyrgyz Republic <<http://www.ombudsman.kg/en/aboutus/history.html>>

The Ombudsman undertakes and guarantees human rights and freedom to all people who needed in help. Moreover, it creates conditions to stop the violations and it is making sufficient efforts to remedy. This human rights mechanism helps society to get democracy and justice. All actions based on authority and publicity. This institution makes all procedures and actions for human rights protection and freedoms.²⁴

Moreover, the law on Ombudsman establishes a specific deadline for submitting complaints to the Ombudsman that it is fully justified, because working with belated complaint difficult in terms of enjoyment of testing activities, obtain the necessary information. All appeals are filed with the Ombudsman in written form within one year from the date of identifying violations of human and civil rights and freedoms. Under exceptional circumstances, this period may be extended to not more than two years.²⁵

The Ombudsman has power to appeal to all the court agencies of the Kyrgyz Republic from the Highest Court up to the regional. Apart of it, the Ombudsman of the Kyrgyz Republic has right to meet with any official of the Government and Parliament bodies who is responsible for disposal of issue. The Ombudsman has rights to visit at any time prisons, jails and other closed establishments. Specially, in case of human rights violation, the resolutions of the Ombudsman have to be executed immediately or findings on them should be made.²⁶

On January 27, 2005, the Supreme Court of the Kyrgyz Republic, the Ombudsman of the Kyrgyz Republic and the Danish Institute of human rights signed a memorandum and created the Human Rights Council. The Human Rights Council is comprised of representatives of the government institutions, universities, the media and non-governmental organizations. The Council

²⁴Web site of the Ombudsman in the Kyrgyz Republic. History of creation of the Ombudsman in the Kyrgyz Republic
<<http://www.ombudsman.kg/en/aboutus/history.html>>

²⁵ Toktom student. Law on Ombudsman of the Kyrgyz Republic. Chapter I, article 3
<http://student.toktom.kg/document.phtml?st=doc&code=30918&lang=rus&ctx=%C7%C0%CA%CE%CD%20%CE% C1%20%CE%CC%C1%D3%C4%D1%CC%20%CA%D0*#scroll0>

²⁶ Institute of Ombudsman of the Kyrgyz Republic. Legal Powers. Page 1.
<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CEQQFjAC&url=http%3A%2F%2Fas.ianombudsman.com%2FORC%2Ffactsheets%2FKyrgyzFactsheet.pdf&ei=DV4PUf-PM-PL4AS9koGYDw&usg=AFOjCNEh4foVxtLfykdn2hmnmxkTYasw&sig2=dAV_GwSDOngzLOcOLGS8mQ&bvm=bv.41867550,d.bGE>

should develop a strategy for the reform of national legislation in accordance with international standards of human rights and search solutions in the field of human rights in the Kyrgyz Republic.²⁷

The human rights council has 3 main activities: to collect, analyze and disseminate objective, reliable information on human rights issues. The main aim of the Council is to promote a dialogue between civil society and State institutions, to facilitate the development and promotion of human rights and the rule of law in the country.²⁸

International Human Rights Protection System United Nations Committee

There is not only national protection of Human Rights, there is also international protection. International treaties, conventions and laws have a big impact on the national legislation of the Kyrgyz Republic. They play a significant role on the national level. According to Article 6 of the Constitution of the Kyrgyz Republic: “The norms of international human rights treaties are directly applicable and take precedence over the rules of other international treaties.”²⁹ It means that international treaties have priority. Thus international treaties have power which is stronger than national legislation because they are respected on the international level.

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law.³⁰ It means that there are various instruments that regulate the protection of human rights. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

There are treaty bodies which monitor the international human rights treaties. The human rights treaty bodies are committees of independent experts that monitoring implementation of the core

²⁷ Human rights council. About us.

<http://www.hrab.kg/index.php?option=com_content&view=article&id=47&Itemid=27&lang=ru>

²⁸ Usarov M. Council on human rights. Yearbook on Human Rights in the Kyrgyz Republic on 2010. Bishkek 2011. Pages 6-7

²⁹ The Constitution of the Kyrgyz Republic. Article 6. 27 of June 2010.

³⁰ Ibid

international human rights treaties.³¹ They are created in accordance with the provisions of the treaty that they monitor.

Treaty bodies monitor implementations by reviewing reports submitted periodically by States parties on steps taken to implement treaty provisions. Most human rights treaty bodies are competent to receive and consider individual complaints, while several may conduct inquiries.³²

Each State party is required to submit regular reports on how it has implemented treaty provisions. The relevant human rights treaty body considers these reports in the presence of a delegation of the State party and in the light of all information, including further written information provided by the State party, as well as information provided orally during the consideration of the report.³³

The committees also receive information from United Nations agencies, national human rights institutions (NHRIs) and civil society actors, in particular non-governmental organizations (NGOs), professional associations and academic institutions. Based on this process, human rights treaty bodies adopt what are generally known as “concluding observations”, which refer to the positive aspects of a State’s implementation of the treaty and the areas where the treaty body recommends the State to take further action.³⁴

The nine international human rights treaties monitored by the human rights treaty bodies create legal obligations for States to promote and protect human rights. When a State accepts a human rights treaty through ratification or accession, it becomes a State party to that treaty and assumes the legal obligation to implement the rights set out in it. The United Nations treaty body system plays a pivotal role in strengthening the protection of human rights nationally.³⁵

According to the book “Contemporary international Law” a series of international human rights treaties and other instruments adopted since 1945 have conferred legal form on inherent human rights and developed the body of international human rights. Other instruments have been adopted at the

³¹ United Nations Human rights. Office of a high Commissioner of the Human Rights. Human Rights Bodies. <<http://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx>>

³² Working with the United Nations Human Rights Programme: A Handbook for Civil Society. Human Rights Treaty Bodies. Page 31

³³ ibid

³⁴ Ibid

³⁵ Ibid. Page 34

regional level reflecting the particular human rights concerns of the region and providing for specific mechanisms of protection.³⁶

The use of international standards is an important factor in the development of constitutional law of the Kyrgyz Republic, as on this basis are necessary additions, changes in the system of the Kyrgyz legislation. It means that international protection is a consisting part of the national system of the Kyrgyz Republic.

Currently there are many different international organizations which regulate human rights protection. The largest, major and most fundamental international organization is the United Nations. This organization has membership of many countries all over the world, presently 193 member States of the United Nations.³⁷ Kyrgyzstan became a member of the United Nations organization on March 2, 1992. The establishment of the UN and the adoption of its Charter marked the beginning of a new stage of inter-State relations. The UN Charter was the first multilateral treaty in the history of international relations, which laid the foundations for extensive development of cooperation by States to human rights.³⁸

The United Nations has many different Committees and Councils. Pradeep Sharma, Deputy Resident Representative UN, stated: “The United Nations system has the following human rights protection mechanisms: UN Charter-based bodies and Treaty-based bodies. Charter based bodies are Universal Periodic Review, special procedures. Treaty-based bodies are created under the international human rights treaties and made up of independent experts mandated to monitor State parties compliance with their treaty obligations.”³⁹

This research will introduce the work of United Nations Human Rights Committee, a treaty-based body. As Kyrgyz Republic does not have special Court for human rights protection, citizens can apply to the Human Rights Committee for protecting themselves and for preventing violations of human rights. The role of the Human Right Committee is meaningful because all important

³⁶ Nogoibaeva, Elida. Mateeva K., Baetov A. “Materials and Cases. Contemporary International Law.” Bishkek 2012. Pages 263-70

³⁷ United Nations at a Glance. <<http://www.un.org/en/aboutun/index.shtml>>

³⁸ About United Nations in Kyrgyzstan. <<http://www.un.org.kg/ru/component/resource/article/82-temp/1467-about-un-in-kyrgyzstan>>

³⁹ Interview of the Deputy Resident Representative United Nations, Pradeep Sharma.

procedures such as consideration of compliance, reports and comments of state parties regulate by this Human Right Committee. Moreover, the Human Right Committee has jurisdiction to examine individual complaints on violation of rights contained within the ICCPR.⁴⁰

The United Nations Human Rights Committee is a body of independent experts that monitors the implementation of the International Covenant on Civil and Political Rights by its State parties. Each country incurs an additional obligation to submit periodic reports to the monitoring committee set up under that treaty on how the rights are being implemented. This system of human rights monitoring is common to most of the UN human rights treaties.⁴¹

The reports must set out the legal, administrative, judicial and other measures that the State has adopted to implement the treaty provisions and provide information on the difficulties it has encountered. These reports are ultimately examined by the relevant. An initial report is usually required one to two years after the entry into force of the treaty in the State concerned. The periodicity of subsequent reports varies from two to five years depending on the treaty provisions and the decisions taken by the committees. Several committees accept combined reports, meaning that a State party may submit two or more of its periodic reports due to a given committee in one combined report.⁴²

Most treaty bodies identify when the next report is due in their concluding observations. States parties are encouraged to see the preparation of their reports for the treaty bodies not only as the fulfillment of an international obligation, but also as an opportunity to assess the state of human rights protection within their countries for the purpose of policy planning.⁴³

In addition to the State party's report, human rights treaty bodies may receive information on the implementation of treaty provisions from United Nations agencies, funds and programs and other intergovernmental organizations, national human rights institutions (NHRIs), as well as from civil

⁴⁰ Nogoibaeva, Elida. Mateeva K., Baetov A. "Materials and Cases. Contemporary International Law" Bishkek 2012. Page 271

⁴¹ United Nations Human rights. Office of a high Commissioner of the Human Rights. What are the treaties bodies? <<http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>>

⁴² Working with the United Nations Human Rights Program: A Handbook for Civil Society. Human Rights Treaty Bodies. Page 39

⁴³ Ibid. Page 40

society, particularly NGOs (both national and international), professional associations and academic institutions.⁴⁴

Based on received information human rights treaty bodies adopt what are generally known as “*concluding observations*”, which refer to both positive aspects of a State’s implementation of a treaty and areas where the treaty body recommends the State to take further action. It is important for the State party to report back to the committee in subsequent periodic reports on the steps taken to implement these recommendations, as well as the treaty’s provisions.⁴⁵

In order to assist States in implementing their recommendations, the human rights treaty bodies have begun to introduce procedures to ensure effective follow-up to their concluding observations. Some committees request, in their concluding observations, that States report back to the country or follow-up rapporteur within an agreed time frame on the measures taken in response to specific recommendations or “priority concerns”. The rapporteur then reports back to the committee. Some members of treaty bodies have undertaken visits to countries, at the invitation of the State party, in order to follow up on the report and the implementation of concluding observations.⁴⁶

In addition to the reporting procedure, some of the treaty bodies may perform additional monitoring functions through three other mechanisms: *the inquiry procedure, the examination of inter-state complaints and the examination of individual complaints*.⁴⁷

The recognition of human rights is not only a right, but it also requires the performance of certain obligations. Respect of human rights requires non-interference in the exercise of human rights and refraining from restricting rights.⁴⁸ Commitment to the protection of human rights requires States to prevent violations. Implementation of human rights requires the State to guarantee the free exercise of basic human rights. At the individual level, everyone should respect the rights of others.

⁴⁴ Working with the United Nations Human Rights Program: A Handbook for Civil Society. Human Rights Treaty Bodies. Page 41

⁴⁵ Human Rights Law Review. Oxford Journals. <<http://hrlr.oxfordjournals.org/content/6/1/27.abstract>>

⁴⁶ Working with the United Nations Human Rights Programme: A Handbook for Civil Society. Human Rights Treaty Bodies. Page 42

⁴⁷ United Nations Human rights. Office of a high Commissioner of the Human Rights. Complaints procedures under the human rights treaties. <<http://www2.ohchr.org/english/bodies/petitions/CSW.htm>>

⁴⁸ Stanford Encyclopedia of Philosophy. Human Rights. December 27, 2012. <<http://plato.stanford.edu/entries/rights-human/>>

In conclusion, The United Nations Human Rights Committee performs the vital function of monitoring the enjoyment of the rights set out in the International Covenant on Civil and Political Rights, a legally binding international treaty. Whether in its consideration of States parties' reports, its adoption of general comments, or its examination of complaints by individuals or States alleging violations of the Covenant, The Human Rights Committee is the pre-eminent interpreter of the meaning of the International Covenant on Civil and Political Rights.

International Covenant on Civil and Political Rights

International Covenant on Civil and Political Rights, adopted by the UN General Assembly December 16, 1966, contains a wide range of fundamental rights and freedoms that must be provided by each State party; to all persons within its territory and subject to its jurisdiction.

The Human Rights Committee examines reports and makes "general comments" that considers appropriate. In its general comments, the Human Rights Committee has provided an interpretation of certain articles of the Covenant, proposes measures to be taken by States to implement them, and makes recommendations on what issues should be reflected in the submission by their reports.⁴⁹

The Human Rights Committee, established in accordance with the International Covenant on Civil and Political Rights, jurisdiction and individual complaints concerning violations of their rights by the State under whose jurisdiction they are located. The Human Rights Committee was set up under an international treaty called the International Covenant on Civil and Political Rights (ICCPR). Currently, the vast majority of UN Member States are parties of International Covenant on Civil and political rights.⁵⁰

Moreover, the role of the Human Rights Committee is to ensure that state parties (countries which have joined the ICCPR) respect human rights as set out in the ICCPR. The Committee is a treaty body and it has treaty (international legal) powers. These powers entitle the Committee to check whether countries are meeting their legal obligations to protect human rights as set out in the ICCPR.

⁴⁹ US Human Rights Network. ICCPR. <<http://www.ushrnetwork.org/our-work/project/iccpr-international-covenant-civil-political-rights>>

⁵⁰ Alymbaev. Council on Human Rights Yearbook on human rights in the Kyrgyz Republic 2010. Bishkek 2011. Chapter 1. Pages 37-38

The Committee is made up of 18 persons who serve in their personal capacity. It meets 3 times a year at the United Nations in Geneva and in New York.⁵¹

Finally, there are four main ways of supervising and monitoring:

- I. Reporting
- II. Considering Individual Communications
- III. Issuing General Comments
- IV. Considering Inter-State Complaints⁵²

Individual communication must: be submitted by the individual whose rights have been violated or with the written consent of the individual. In exceptional cases where the individual is unable to give consent this requirement may be ignored. The Communication cannot be anonymous; show that domestic remedies have been exhausted; not be under consideration by another international investigation or settlement procedure. The Committee considers Individual Communications in closed session, but its Views (decisions) and the follow-up are public.⁵³

An important advantage of the complaint in the treaty body is the fact that State party having made a declaration in the contracts the thief must comply with its obligations, including the obligation to take effective measures to eliminate the violations. Individual complaints by the human rights treaty body authoritatively determines whether there has been a violation, and the State is obliged to comply with the decision of the treaty body.⁵⁴

Individual complaints under the international human rights treaties can be served only when domestic remedies have been exhausted. In the other words it can be done when complaint/claimant underwent various stages of local judiciary or administrative authorities within a reasonable period of time. This rule does not apply if the local remedies were ineffective or unreasonably prolonged.⁵⁵

⁵¹ US Human Rights Network. ICCPR. <<http://www.ushrnetwork.org/our-work/project/iccpr-international-covenant-civil-political-rights>>

⁵² Centre for Civil and Political Rights. The Human Rights Committee. Geneva (Switzerland).

<<http://www.ccpcentre.org/hr-committee/>>

⁵³ Ibid

⁵⁴ The Office of High Commissioner of the human rights. Chapter VIII. Page 156

⁵⁵ Ibid. Page 160

Inter – state complaints. A State party may submit a communication to the Committee alleging that another State party is not fulfilling its obligations under the Covenant. This reflects the dual understanding of a human rights treaty not as simple contract between a State party and persons subject to its jurisdiction, but also a multilateral treaty in the traditional sense that all States parties to a treaty have an interest in the compliance of other States parties with their obligations. In this fashion, it can be legally said that human rights violations in a State party are of direct concern to all other States parties.⁵⁶

Such a complaint, which is provided for in article 41 of the Covenant, however, may be made only in respect of two States parties that have declared that they recognize the competence of the Committee to receive and consider such inter-State complaints. The first step would be for the State lodging the complaint to bring the matter to the attention of the State that is alleged not to be fulfilling its obligations. Within three months, the latter should reply, in the form of a written explanation or clarification. If, within six months, the matter is not settled to the satisfaction of both parties, either may refer it to the Committee, which may deal with it once satisfied that, within a reasonable period of time, all domestic remedies have been tried, without success. Committee may search for a friendly solution.⁵⁷

⁵⁶ Human Rights. Civil and Political Rights: The Human Rights Committee. Page 27

⁵⁷ Ibid. Page 28

Chapter II

Procedures and Practice of Human Rights Protection System in Kyrgyz Republic

Human Rights protection is recognized world - wide and Kyrgyzstan is not an exception. Human Rights must be recognized, respected and protected by the State. The State should provide all conditions and procedures in protection of human rights. There must be a complete system and strategy which will help the State to solve problems in protecting human rights step by step, because every person, every citizen must feel that he is under state's protection. Moreover, human rights should not be limited; they should be increasing. Thus, human rights and freedoms – are major criteria of the statehood's quality, morality and human values. Therefore, safeguarding human rights in Kyrgyzstan is a main goal to change position of each individual and social protection.

State's officials and leaders of non-governmental organizations are defenders of human rights at the national level in the Kyrgyz Republic. Thus, the main aim and goal of human rights protection is to provide all necessary procedures and actions for local population which will protect human rights. Human rights protection on the national level must be reinforced and protect universal human rights. Therefore, human rights protection on the national level should take into account international standard and support them.

First of all, there is a court system in the Kyrgyz Republic, where individuals can apply with human rights violations. It gives an opportunity to individuals to protect violated rights by applying to the courts. There are III instances which will help to get the truth and protection to each person. The Supreme Court is the court of III instance. It is the highest judicial body.⁵⁸ The courts of the II instance. It includes: regional court, Bishkek City court and Military court of the Kyrgyz Republic.⁵⁹ The final one are courts of the I instance. They include district and equivalent courts.⁶⁰ Judicial branch have power in protecting the violated human rights.

⁵⁸ Law on Supreme Court and local courts of the Kyrgyz Republic. Chapter II. Article 12. 13th of June, 2011 № 39

⁵⁹ Law on Supreme Court and local courts of the Kyrgyz Republic. Chapter III. Article 25. 13th of June, 2011 № 39

⁶⁰ Law on Supreme Court and local courts of the Kyrgyz Republic. Chapter II. Article 33. 13th of June, 2011 № 39

Everyone has the right to judicial protection.⁶¹ Judicial protection is one of the most important ways to protect public rights and freedoms that is implemented in the form of Justice and guaranteed by the State. Justice is the activities carried out by the Court in specific procedural form through the consideration and resolution of the court hearings of cases and application of the law in accordance with the rules of coercive measures for offenders or acquittal of innocent.

Protection of human rights in the Kyrgyz Republic is not however fully developed. For instance, if person did not get the protection of his rights under the national legislation he will has troubles to get the results in justice, because the Kyrgyz Republic does not belong to international court that is why all disputes solving on the national level.

Human rights in the Kyrgyz Republic should be protected under the law enforcement agencies. The activity of the law enforcement agencies is based on unconditional compliance with the laws of the Kyrgyz Republic and international treaties, taking into account the rights, freedoms and lawful interests of citizens. The law enforcements activities in the Kyrgyz Republic are carried out by special bodies to which must be attributed: Prosecutor's Office, Ministry of the Internal Affairs with its system of bodies, the State Committee of National Security, Ministry of Justice.⁶²

To implement the obligations of the State to the population of the country, society, the international community, the State should have some structures and mechanisms, which would maintain constant control and supervision over the implementation of laws and other normative acts. One of such protective mechanisms is the Prosecutor's Office. The Prosecutor's Office of the Kyrgyz Republic - is the Government authority responsible for supervising the strict and uniform execution of laws by local self-government bodies, ministries, State committees, State administration, public associations, officials and citizens.⁶³

The Ministry of Internal Affairs of the Kyrgyz Republic - is the State executive authority which carries out within its competence in the field of public administration, protecting the rights and freedoms of individuals and citizens, law enforcement, public safety. The Ministry of Internal Affairs

⁶¹ The Constitution of the Kyrgyz Republic. 27th of June,2010. Chapter II. Article 20, subparagraph 8 of paragraph 5.

⁶² United Nations. International Treaties on Human Rights. General legal framework of the human rights protection. Chapter III. Page 9

⁶³ Law of the Kyrgyz Republic "On the Prosecutor's Office of the Kyrgyz Republic." 17th of July, 2009. Article 1

in their activities proceed from respect for the rights of citizens and to guarantee the protection of every human being, regardless of his nationality, social position, wealth or other status, race and nationality, sex, age, education, language, attitude to religion, political and other beliefs, type and nature of occupation.⁶⁴

The Ministry of Justice is the central body of State administration, conducting State legal policy as regards to the protection of the rights and legitimate interests of citizens.⁶⁵ The State Committee of National Security is the executive body of the Kyrgyz Republic and shall be intended to prevent compromising the security of the Kyrgyz Republic. National security agencies are an integral part of the security forces of the Kyrgyz Republic and within their authority shall ensure the security of individuals, society and the State, are working to identify, prevent and combat reconnaissance-subversive activities of foreign special services and organizations, as well as illegal encroachments on the constitutional system, sovereignty and territorial integrity of the Kyrgyz Republic.⁶⁶

At the present time, there are numerous non-governmental organizations (NGO) which protect human rights separately from governmental mechanism. NGO also submit reports. These reports are called – shadow reports. They contain problems of human rights protection and solution from the view of NGO. Reports reflect the main work of this organization in human rights protection and all actions which were involved to solve those problems. NGO's were created for developing the democracy among civil society. Moreover, NGO monitors the international standards of human rights protection. Thus, they apply international standards and methods in their work and activity. NGO's are conduct trainings among civil groups (such as teachers, lawyer and etc.), those trainings based on international standards, conventions and other documents.

⁶⁴ The Law of The Kyrgyz Republic on Internal Affair bodies. 11th of January, 1994. N 1360-XII. Chapter I. Article 1, article 3

⁶⁵ Regulation on the Ministry of Justice of the Kyrgyz Republic. 15th of December, 2009. № 764. Chapter II. Article 5

⁶⁶ The Law of the Kyrgyz Republic on National Security. 11th of January, 1994. № 1362-XII. Chapter I. Article 1

Procedures and Practice of Human Rights Protection System in the United Nations

The United Nations has great experiences of human being protection in all spheres which are important in our life. In this part of the research, the main goal is to show detailed procedures how each individual can apply to the United Nations Human Rights Committee if their rights were violated. This mechanism is available to all people who need protection, if they did not get it under their national legislation. Anyone have a right and opportunity to bring a human rights problem to the United Nations.⁶⁷ All over the world there are many people solve problems with the help of the United Nations. There are several steps and levels which are necessary to apply to the United Nations Human Rights Committee. This paragraph will cover all necessary procedures which are required.

First of all, it is important to note that individuals can apply to the United Nations Human Rights Committee. There are six treaty bodies that can consider individual complaints. In this point the Human Rights Committee apply for the individual complaint to the State party of the First Optional Protocol to the International Covenant on Civil and Political Rights.⁶⁸ Thus, according to these facts, every person can bring individual communication if his or her human rights under the International Covenant on Civil and Political Rights were violated by the State party. Moreover, a third party may also consider a complaint if they have a consent.

Secondly, complaints should be against the States under the following conditions: “1. The State must be a party to the treaty in question; having ratified or otherwise accepted it. 2. The State party must have recognized the competence of the committee established under the relevant treaty to consider complaints from individuals.”⁶⁹ Moreover, in case of International Covenant of Civil and Political Rights a State recognizes the Committee's competence by becoming a party to a separate treaty: the ICCPR First Optional Protocol.⁷⁰

⁶⁷ Office of the United Nations High Commissioner of the Human Rights. Procedure for complaints by individuals under the human rights treaties. <<http://www2.ohchr.org/english/bodies/petitions/individual.htm>>

⁶⁸ Office of the United Nations High Commissioner of the Human Rights. Human Rights Bodies – Complaints Procedures. <<http://www2.ohchr.org/english/bodies/petitions/index.htm>>

⁶⁹ Office of the United Nations High Commissioner of the Human Rights. Procedure for complaints by individuals under the human rights treaties. <<http://www2.ohchr.org/english/bodies/petitions/individual.htm>>

⁷⁰ Ibid

Finally, if all circumstances are applicable, person gives full information about him and of course, the information of the State party against whom he is complaining. Further detailed explain the facts of the case. Moreover, concretely give a picture of all steps that were passed in the country where person had violations. In this case, all steps that was accordingly to the Kyrgyz Republic. All court instances and decisions that were made in case of the dispute resolution. The last one is to explain why there were the violations of the rights accordingly to the treaty articles. Complaining site should attach all necessary documents (decisions, laws) that are relevance to the case because this will be very helpful.

The next step in the procedure is the registration of his case. Whenever the case has already registered there are special procedures that are following step by step. By the way, case will be registered if it contains all necessary and essential elements which were described above. After that the Committee gives to the State party an opportunity to comment. Moreover, there is a time frame to submit the observations. It means that the State party should fulfill this provision in certain time which is due the Committee.⁷¹

Admissibility stage and merits stage.⁷² They are different from each other. First of all, let us consider admissibility: “The admissibility of a case refers to the formal requirements that your complaint must satisfy before the relevant committee can consider its substance.” The second stage is merits: “The merits of the case are the substance, on the basis of which the committee decides whether or not your rights under a treaty have been violated.”⁷³

Admissibility of the case is an important gap in the process. The Committee has a right to consider one of several factors and elements of the complaining case. Factors can be very different. For example, it may consider when person passed all necessary procedures in own country before applying to the Committee. Next one, for instance, person should show that he is a victim, that he is really affected by the law, policy or actions of State party. Moreover, those actions violated or

⁷¹ Office of the United Nations High Commissioner of the Human Rights. Procedure for complaints by individuals under the human rights treaties. <<http://www2.ohchr.org/english/bodies/petitions/individual.htm>>

⁷² Ibid

⁷³ Office of the United Nations High Commissioner of the Human Rights. Procedure for complaints by individuals under the human rights treaties. <<http://www2.ohchr.org/english/bodies/petitions/individual.htm>>

violating his rights. Finally, the Committee can reject claim in case when person have already applied to another treaty body or European Court of Human Rights or maybe, African Court on Human Rights. The Committee rejects such cases to prevent duplications on international level. Merits of the case is a stage which is proceed to consider the merits of your complaint, stating its reasons for concluding that a violation has or has not occurred under the various articles it considers applicable.⁷⁴

Finally, the decision that Committee makes is the final one and it can not be appeal against the decision. Firstly, if the Committee decided that person who complaining has been the victim of the violation Committee gives three months to the State party to supply information on the steps it has taken to give effect to its findings. Secondly, if the Committee decided that there were not violations in complaint the process is complete when the Committee will transmit decision to complaining person and to the State party. This article describes the situations which happen in the framework of the Committee. The future steps which applicable in different situations.

Over the past few years in the Kyrgyz Republic marked manifestation of unreasonable restrictions on political and civil rights, justified by the need to ensure stability and safety in the country. Frequent violations of civil and political rights are of concern to the human rights community in the Kyrgyzstan.⁷⁵ information was provided on the violations of human rights in the following areas: right to access to information, freedom of speech; the right to freedom of Association and peaceful assembly; the right of citizens to freedom of movement; the right to vote and to be elected; torture and inhuman treatment; the rights of ethnic and religious minorities; the rights of refugees; women's rights and gender equality; the right to life in prison.⁷⁶

The United Nations Human Rights Committee registered 18 complaints about human rights violations in the Kyrgyz Republic, 14 of them by the beginning of 2012, already considered and adopted decisions thereon (views). In spite of the fact that legal decisions have been rendered by the

⁷⁴ Office of the United Nations High Commissioner of the Human Rights. Procedure for complaints by individuals under the human rights treaties. <<http://www2.ohchr.org/english/bodies/petitions/individual.htm>>

⁷⁵ Bulletin of Human Rights in the Kyrgyz Republic. №1, 2012. Page 20

⁷⁶ Ibid

United Nations Human Rights Committee in 2008 until today have not been taken effective measures at the national level.⁷⁷

According to chapter 2 of the Article 41 of the Constitution of the Kyrgyz Republic: "every person has the right, in accordance with international treaties apply to the United Nations treaty bodies on human rights for the protection of rights and freedoms. If these bodies violations of human rights and freedoms of the century, the Kyrgyz Republic is taking measures for their restoration and reparation of harm."⁷⁸ Unfortunately, at present, these measures are not taken by public authorities.

The main reason for non-performance of the Kyrgyz Republic of the decisions of the United Nations Human Rights Council in violation of its international obligations is the lack of proper political will and national mechanisms for the implementation of these decisions. Execution or implementation of international commitments in the field of protection of human rights is a necessary condition for human development and democratic processes in the country.⁷⁹

The UN Committee on Human Rights, in accordance with the Optional Protocol, in the case of a violation of human rights, has the authority to access the State - violator to appeal take appropriate measures to redress and compensation for the damage caused. These can be individual measures aimed at restoring the previous legal status of victim by: a) re-examination of the case by the court or administrative body; b) the prosecution and punishment of those responsible; c) compensation for harm; d) the adoption of general measures aimed to address the systemic weaknesses that lie at the heart of the identified violations of the Committee.⁸⁰

There is a full range of obligations defined by the Optional Protocol, it gives an opportunity to see how the government fulfills its obligations

- State's acceptance of provisional measures issued by the United Nation Human Rights Committee;
- State's response essentially violated rights;

⁷⁷ Bulletin of Human Rights in the Kyrgyz Republic. №1, 2012. Page 21

⁷⁸ Ibid.

⁷⁹ Council on Human Rights.

<http://hrab.kg/index.php?option=com_content&view=article&id=231&Itemid=106&lang=ru>

⁸⁰ Bulletin of Human Rights in the Kyrgyz Republic. №1, 2012. page 22

- Completeness of execution state decisions of the United Nations Human Rights Committee;
- Compliance with the priority of international treaties over the regional.⁸¹

There have been several applications to the United Nations Human Rights Committee with the complaints of violations of the State – party from Kyrgyz Republic. All cases were different but they had a same problem which concentrated on the violation of the human rights. According to the facts, applying parties finished and passed all necessary steps and stages that are exist on the national level. The decisions which were made in local courts violated the human rights and that is why they applied to the United Nations Human Rights Committee.

Nurbek Toktakunov vs. Kyrgyzstan

One of the famous and most recent cases which were solved in the United Nations Human Rights Committee is case of Nurbek Toktakunov v. Kyrgyzstan. It was decided in March 28, 2011. The subject of the complaint was: “Allegation that denial of access to State – held information of public interest violated right to seek and receive information; effective remedy; access to court; right to a fair hearing by an independent and impartial tribunal.” The Committee decided that there were violations of the article 19 of the ICCPR⁸²

The facts of the complaining case: on 3rd of March 2003 the legal consultant Nurbek Toktakunov (complaining side) requested the Central Directorate of Corrections (CDC) of the Ministry of Justice (MoJ), to provide him with the information on a number of individuals sentenced to death in Kyrgyzstan. On the 5th of April, 2005 the CDC refused to provide such information, due to the classification of that information as “confidential” and “top secret.”⁸³

Further, Toktakunov filed a complaint about the violation of his right to access and receive the information to the Bishkek Inter – District Court, referring to the article 9, paragraph 2 of the ICCPR. Nurbek Toktakunov marked that he requested on behalf of the individual as a citizen of the Kyrgyzstan and public association. In December 2004 the Bishkek Inter – District Court refused the

⁸¹ Human Rights. Civil and Political Rights: The Human Rights Committee. How should a State party’s report compiled? Pages 16-17

⁸² Compendium of Recommendations, Concluding Observations and Decisions of the U.N. Human Rights Council Universal Periodic Review, Special Procedures, Treaty Bodies. Michelle Leighton, Naamatova G. Page 89
<<http://ebookbrowse.com/compendium-eng-revised-may-2012-tspc-eng-pdf-d416746920>>

⁸³ Ibid

complaint according to the fact that that case is outside of its jurisdiction. Later Toktakunov filed a private motion to Bishkek City Court. On January 2005 the Bishkek City Court decided to support the decision of the Bishkek Inter – District Court.⁸⁴

Further, the State party provided the following statistics made by the Central Directorate of Corrections (CDC). Author of the complaint argued that the State violated his human rights and limited him to access to the information under the article 19, paragraph 2 of the ICCPR. The United Nations Human Rights Committee was required to decide whether individuals can access to the State - held information. The United Nations Human Rights Committee argued that should be a free access to the State held information and it should be protected under the Covenant. According to those facts, the United Nations Human Rights Committee stated that the State party required providing the requested information or substantiating the limitations of rights to receive State held information under the article 19, paragraph 3 of the Covenant.⁸⁵

Moreover, the United Nations Human Rights Committee marked that the information that was requested from Nurbek's side was lawful because it could not have had any negative impact on defense capability, safety, or politic and economic interest to the Kyrgyzstan which spelled out in the Law of the KR "On Protection of the state secrets." Finally, the United Nations Human Rights Committee said that the State party should provide author with the remedy and provide the Committee within 180 days information about the measures taken to give effect to the Committee's Views.⁸⁶

According to the following case we can said that the Kyrgyz Republic violated the norms international law, especially Article 2 and paragraph 2 of Article 19 of the ICCPR. Paragraph 2 of Article 19 of the ICCPR states: "Everyone shall have a right to freedom of expression; this right shall

⁸⁴ Compendium of Recommendations, Concluding Observations and Decisions of the U.N. Human Rights Council Universal Periodic Review, Special Procedures, Treaty Bodies. Michelle Leighton, Naamatova G. Page 90 - 91 <<http://ebookbrowse.com/compendium-eng-revised-may-2012-tspc-eng-pdf-d416746920>>

⁸⁵ Ibid

⁸⁶ Ibid

include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in printing in the form of art, or through any other media choice.”⁸⁷

The United Nations Human Rights Committee mentioned that the requested information was lawful as it can not negatively affect the defense, security, or economic and political interests of Kyrgyzstan. There were no reasons to classify the information. As Kyrgyz Republic is a State party of ICCPR it should fulfill all necessary obligations in prevention of the human rights protection. The United Nations Human Right Committee made recommendations to the state party.

Zhahongir Maksudov vs. Kyrgyzstan

Zhakhongir Maksudov and Adil Rakhimov, Yakub Tashbaev and Rasuldzhon Pirmatov v. Kyrgyzstan, Communication Nos. 1461,1462,1476& 1477/2006, Human Rights Committee, U.N. Doc. CCPR/C/93/D/1461,1462,1476& 1477/2006 (31 July 2008).

The authors of the communications are Uzbeks. On 13th of May 2005, the authors have appeared on the main square in Andijan, Uzbekistan, where were the demonstrations. After some time, the demonstrators were shot, the soldiers fired indiscriminately into the crowd. In a panic, fearing persecution by the Uzbek authorities they crossed the border with Kyrgyzstan, May 14, 2005.⁸⁸

Authors, together with 524 other individuals who fled Andijan on 13 May 2005, was installed in a tent camp set up along the Uzbek-Kyrgyz border in the Suzak region near Jalalabad (Kyrgyzstan) by UNHCR and administered by the Department of Migration Services under the Kyrgyz Ministry of Foreign Affairs (DMS).

28th of May, 2005 Maksudov, Rakhimov and Pirmatov, and on 23rd of May, 2005 Tashmatov were accused by Uzbek General Prosecutor’s Office under the various crimes of terrorism (art. 155, part 3 of the Criminal Code of Uzbekistan), a violent attempt to overthrow the Uzbek constitutional system (art. 159, part 3), sabotage (article 161), organization of a criminal association (article 242,

⁸⁷ International Covenant on Civil and Political Rights. 16th of December, 1966. Part III. Paragraph 2 of Article 19

⁸⁸ Compendium of Recommendations, Concluding Observations and Decisions of the U.N. Human Rights Council Universal Periodic Review, Special Procedures, Treaty Bodies. Michelle Leighton, Naamatova G. Page 102
<<http://ebookbrowse.com/compendium-eng-revised-may-2012-tspc-eng-pdf-d416746920>>

part 2), riots (art. 244), unlawful acquisition of firearms, ammunition, explosives or explosive devices (art. 247Part 3) and murder (article 97, part 2).⁸⁹

In early June 2005, the Uzbek authorities requested Kyrgyzstan to extradite 33 individuals, including Maksudov; all were charged with having committed crimes under various articles of the Uzbek Criminal Code. The extradition request was based on the 1993 Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993 Minsk Convention) and the 1996 Agreement between Kyrgyzstan and Uzbekistan on the provision of mutual legal assistance in civil, family and criminal matters (1996 Agreement).⁹⁰

On 9 June 2005, Mr. Maksudov applied for asylum in Kyrgyzstan. On the same day, he was issued a certificate confirming that his application had been registered by the DMS. On 16 June 2005, Maksudov, together with 16 other individuals, was taken into custody by Kyrgyz law enforcement officers and placed into the temporary confinement ward (IVS) of the Jalalabad Regional Department of Internal Affairs (Kyrgyzstan) on the basis of the decision of the Uzbek General Prosecutor's Office of 28 May 2005, where the individuals concerned were designated as "terrorists." Maksudov's arrest warrant was issued by the Andijan Regional Prosecutor (Uzbekistan) on 29 May 2005. In violation of the Kyrgyz Criminal Procedure Code (Kyrgyz CPC), the legality of his placement into custody was not examined either by a supervising prosecutor or a court..⁹¹

The DMS considered the authors' application for asylum from June-July of the 2005. In July 2005, found that the motions authors for asylum were valid, because they can be prosecuted in Uzbekistan as participants and eyewitnesses to the events in Andijan. The DMS recognized that his case fell within the definition of "refugee," within the meaning of article 1 A- 2 of the 1951 Convention on the Status of Refugees and article 1 of the Kyrgyz Refugee Law. VMI has concluded

⁸⁹ Compendium of Recommendations, Concluding Observations and Decisions of the U.N. Human Rights Council Universal Periodic Review, Special Procedures, Treaty Bodies. Michelle Leighton, Naamatova G. Page 102 <<http://ebookbrowse.com/compendium-eng-revised-may-2012-tspc-eng-pdf-d416746920>>

⁹⁰ Nogoibaeva, Elida. Kamila M., Baetov A. "Materials and Cases. Contemporary International Law". Bishkek 2012. Pages 263-70

⁹¹ Ibid

that the authors fall under the exception of article 1 of the Refugee Convention, July 26, 2005 DMS had decided to reject the application author.⁹²

The first issue before the Committee was whether the authors' deprivation of liberty had been in accordance with the State party's relevant laws. The authors claimed that contrary to article 110 of the Kyrgyz CPC their placement in custody was not authorized by the Kyrgyz prosecutor and was done in the absence of their counsel and therefore violated relevant domestic provisions. In the absence of a reply from the State party, due weight must be given to the authors' allegations, to the extent that they are substantiated, and it must be assumed that the events occurred as described by the authors. Consequently, the Committee found a violation of article 9, paragraphs 1, of the Covenant.

Actually, Article 9, paragraph 1 of the ICCPR: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Thus, Kyrgyzstan violated the author's right to liberty and security of the person.

The second issue before the Committee was whether the authors' extradition from Kyrgyzstan to Uzbekistan exposed them to a real risk of torture or other ill-treatment in the receiving State, in breach of the prohibition of refoulement contained in article 7 of the Covenant, the Committee observed that the existence of such a real risk must be decided in the light of the information that was known, or ought to have been known, to the State party's authorities at the time of the extradition, and did not require proof of actual torture having subsequently occurred although information as to subsequent events is relevant to the assessment of initial risk. In determining the risk of such treatment in the present cases, the Committee must consider all relevant elements.⁹³

The Committee recalled that if a State party removed a person within its jurisdiction to another jurisdiction and there are substantial grounds for believing that there is a real risk of irreparable harm in the other jurisdiction, such as that contemplated by articles 6 and 7 of the Covenant, the State party itself may be in violation of the Covenant. Since the State party had not

⁹² Nogoibaeva, Elida. Kamila M., Baetov A. "Materials and Cases. Contemporary International Law". Bishkek 2012. Pages 263-70

⁹³ Ibid

shown that the assurances procured from Uzbekistan were sufficient to eliminate the risk of torture and of imposition of the death penalty consistent with the requirements of article 6, paragraph 2, and article 7, the Committee concluded that the authors' extradition thus amounted to a violation of article 6, paragraph 2, and article 7 of the Covenant.⁹⁴

Article 6, paragraph 2 of the Covenant: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court."⁹⁵

Article 7 of the Covenant: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."⁹⁶

The Committee found out the violations of article 2, article 6, paragraph 2 and article 7 of the ICCPR. Moreover, the Committee made recommendations to the Kyrgyzstan. The State is invited to put in place effective measures to monitor the situation of the authors. The State party is intended to provide the Committee with updated information on a regular basis, the current situation of the authors. State party is also under an obligation to avoid similar violations in the future. Moreover, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to implement the Committee's views. The Committee requested the State party to publish the Committee's views.

Kyrgyzstan made violations in applying the rules only regional documents without recourse to universal standards documents. Thus, have been violations of the human rights enshrined in international instruments in the field of human rights. Kyrgyzstan should regulate the human rights protection especially on torture and fair trial.

⁹⁴ Nogoibaeva, Elida. Kamila M., Baetov A. "Materials and Cases. Contemporary International Law". Bishkek 2012. Pages 263-70

⁹⁵ International Covenant on Civil and Political Rights. Part III. Article 6, paragraph 2

⁹⁶ Ibid. Article 7

Procedures of Human Rights Protection under the International Covenant on Civil and Political Rights

The ICCPR covers a broad range of civil and political rights. There is a complaint mechanism for alleged the violations of ICCPR articles contained in the First Optional Protocol. The First Optional Protocol is a separate treaty which is open to the State party of the Covenant. States that become a party of the First Optional Protocol recognize the competence of the Human Rights Committee.⁹⁷

If there are violations of the Optional Protocol they are referred to the Committee's Special Rapporteur. The Special Rapporteur decides whether the case should be registered under the Optional Protocol and further gives possible instructions regarding procedures of the case. The State party against whom the complaint is directed has six months to present its submissions on the admissibility and merits of the case. When it does so, the complaining person has two months to comment, after which the case is ready for a decision by the United Nations Human Rights Committee. The State party receives two reminders after the six-month deadline has passed. If there is still no reply, the United Nations Human Rights Committee considers the complaint on the basis of the information you initially supplied.⁹⁸

Moreover, the United Nations Human Rights Committee notes that the Covenant has a big impact in some respects of protecting the other international instruments. Thus, a complaint can be brought before the Committee when the broader protections in the Covenant are invoked. From the Committee's point of view, the Covenant provides the greater and effective protection of the human rights. Covenant has power in the compares with another international mechanism.⁹⁹

According to the procedures, for example if the United Nations Human Rights Committee decided that complaining person is a victim of the state party, the State is invited to give the information in the period of three months on the steps it has taken to give effect to the Committee's Views. The main argument of this requirement is that in paragraph 3 of the article 2 of the Covenant,

⁹⁷ Office of the United Nations High Commissioner of the Human Rights. Procedure for complaints by individuals under the human rights treaties. <<http://www2.ohchr.org/english/bodies/petitions/individual.htm>>

⁹⁸ Ibid

⁹⁹ Ibid

which says that State party guarantees the effective remedy for the protection of rights. Therefore, this article has power in complaint against the State party because it should follow and fulfill all rules and articles of the documents, mainly of the Covenant.¹⁰⁰

Conclusion

This thesis paper covers many meaningful and important points regarding the human rights protection. First of all, there is a description of each framework especially of the Kyrgyz Republic, the United Nations Human Rights Committee and ICCPR. The paper concentrated on the separate taken procedures of protecting human rights. The main point and aim of the thesis paper was to show how each of the mechanisms solve problems that may touch everyone and may happen with each of us.

The Kyrgyz Republic has a specific national mechanism which is protects human rights but does not always have good decisions. That is why individuals can apply to the international level and get justice and human rights protection as is dined at State level. Kyrgyz Republic does not have strong court system. Moreover, the human rights are not always protected under national mechanism. The human rights protecting problem is not so developed in the Kyrgyzstan. Government and other bodies do not pay much attention to the prevention violations of human rights. Individuals under the jurisdiction of the Kyrgyz Republic should feel protected and secured, but there is a weak protecting system of human rights.

From the point of view, there should not be violations of the Constitution of the Kyrgyz Republic or another international treaty, Conventions and Covenants. If the State ratified and signed treaties it should follow all rules and comply with the enforcement of them. Moreover, the articles of the Constitution contain the same provisions as all international treaties.

International bodies have a great impact to the Kyrgyz Republic. In this case the relevant United Nations Human Rights Committee. The United Nations Human Rights Committee gives opportunities to every person in the world apply to it. There are not so limited and strict requirement

¹⁰⁰Office of the United Nations High Commissioner of the Human Rights. Procedure for complaints by individuals under the human rights treaties. <http://www2.ohchr.org/english/bodies/petitions/individual.htm>>

for applying. Secondly, the Human Rights Committee gives chance to pass all necessary steps in the national level and when all resources will be exhausted to complain to this Committee. The United Nations Human Rights Committee has an objective point of view. It takes into consider all facts and documents which were involved before.

Moreover, the United Nations Human Rights Committee also has a specific strategy and procedures of the human rights protection. One weak point is that consideration of the case takes a long time but again there are special circumstances which are applicable in some occasions and circumstances. Moreover, the United Nations Human Rights Committee is an international body which means that it has a priority. Its decision can not be appealed. Thus decisions made by the Human Rights Committee are final one.

Firstly, Kyrgyzstan should ensure the basic civil and political rights of the civil society organizations were protected in accordance with the obligations set forth in the International Covenant on Civil and Political Rights. Secondly, State officials and citizens are still insufficiently aware of the ICCPR, its Optional Protocol and the accompanying mechanisms. In this regard, Kyrgyzstan should take measures to enhance awareness of the Covenant and its Optional Protocol through a program of dissemination of human rights texts and the systematic training of all persons involved in the administration of Justice, in particular judges and lawyers. In accordance with this statement, people should know theirs rights and should fight for the protection of them.

These measures include the enactment of new laws, amendments and additions to the already existing, and development of normative legal documents regulating the activities of State bodies for the protection of the rights and interests of citizens of the Kyrgyz Republic, educate citizens about their rights under international treaties ratified by the Kyrgyz Republic, active cooperation with international human rights organizations that may assist in carrying out the obligations of Kyrgyzstan.

There are a various number of human rights violations in the Kyrgyz Republic. The national mechanism of the human rights protection should develop. Make amendments in the laws or create new laws which would regulate effective human rights protection for example, in fair trials.

Furthermore, make adding's to Criminal Code of the Kyrgyz Republic and Criminal Procedural Code of the Kyrgyz Republic. In those Code need to add articles which will have a power to protect human rights from torture, inhuman and degrading treatment.

Kyrgyzstan should expand access to justice, to provide the right to appeal to the Constitutional Chamber regarding the violation or restriction of human rights and freedoms. The problem is that the Constitution of the Kyrgyz Republic, which introduced the concept of human rights, has to be really working. Within the basic law and with the help of legal, organizational and moral actions that should be created in the society for deep respect for human rights. The highest validity of the Constitution and its direct effect requires in practice to ensure that it was operating a legitimate act that should guide all branches of government.

Moreover, Kyrgyz Republic has the obligation to carry out their duties in good faith and ensure that their national laws with its international obligations, has become accountable to their own citizens to other States parties and the international community as a whole. In addition, many major international human rights instruments contain provisions requiring States parties to regularly report on the steps taken to guarantee the enjoyment of those rights, as well as on their progress towards that goal.

Finally, the research shows the real picture of human rights protection in the Kyrgyz Republic and within the framework of the United Nations Human Rights Committee. It is great opportunity for Kyrgyzstan to become a member of the United Nations and ratified Covenants and other important treaties. There was analysis and recommendations regarding the Kyrgyz Republic. This paper reflected how national and international levels of human rights protection interact.

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