

Annexe I

[Original: French]

Individual opinion of Committee member Mr. Olivier de Frouville

1. Admissibility of the claims made in relation to article 14 of the Covenant

1. In its Views, the Committee declares the author's claims under article 14 of the Covenant (paras. 9.3 and 9.4) to be inadmissible, while it finds his claims under articles 9, 10 (1) and 7, read alone and in conjunction with article 2 (3) (para. 9.5), admissible. However, the distinction made by the Committee seems artificial, requiring a selective reading of the information provided by the author.

2. In both cases, the three circumstances listed by the Committee in paragraph 9.5 obtain: (a) the author himself was not able to seek redress, either because he was being held incommunicado (from February to May 2009) or because he feared that he or his family would face reprisals; (b) his relatives, on the other hand, had lodged a number of complaints, notably with Tashkent City Court and the Supreme Court; and (c) the State party has not indicated what other remedies would have been available to the author or his relatives.

3. Concerning the remedies invoked in relation to article 14, it should be noted that "[t]he author's wife also submitted several claims to the Prosecutor-General's Office, the Supreme Court, the Ombudsman, the President and the Government of Uzbekistan, challenging the court decisions relating to the author as unlawful and unfounded. On 22 June 2009, the Prosecutor-General's Office dismissed her claim on the grounds that the courts acted in accordance with the law, correctly established the relevant facts and qualified the offence, and imposed an adequate penalty. On 10 and 28 December 2009, the Tashkent City Court and the Supreme Court respectively, dismissed her claims on the same grounds" (para. 2.10).

4. The author's claims under article 14 concern both the pretrial phase and the trial itself. For the purposes of admissibility, these claims should have been considered as a whole, since they call into question the fairness of the entire proceedings, rather than being addressed separately as in paragraphs 9.3 and 9.4 of the Committee's Views. These claims would in any case have warranted consideration by the Committee on the merits, and, had that occurred, the Committee would likely have concluded that there had been several violations of article 14.

2. Incommunicado detention

5. The author was held incommunicado from 8 February to 4 May 2009 in pretrial detention facility No. 64/1, after being sentenced to 6 years in prison by Chilanazar District Court. The Committee rightly observes that such incommunicado detention of itself violated articles 7 and 10, independently of the torture and ill-treatment to which the author was subjected during this period of imprisonment. At the same time, the Committee confines itself to noting a violation of article 9 on the basis that the author's detention was not in conformity with national law, without taking into account the author's separate claim that article 9 was also violated owing to the incommunicado nature of his detention (para. 3.2). The Committee has, however, accepted that incommunicado detention can in itself

constitute a violation of article 9.⁹ It is true that the cases in which the Committee has had to deal with such claims have concerned pretrial detention, whereas, in the present case, the author was detained incommunicado after being tried and sentenced to imprisonment. Yet it does not follow therefrom that there is no violation of article 9: any incommunicado detention, outside the reach of law, constitutes arbitrary detention within the meaning of the second sentence of article 9 (1). It also constitutes a violation of the right to security of person recognized in the first sentence of article 9 (1).

6. Moreover, any incommunicado detention that removes a person from the protection of the law violates article 16, since it constitutes a denial of the victim's right to recognition everywhere as a person before the law. Certainly, the author did not raise this claim explicitly, but I believe that the Committee could have done so of its own motion and found a violation, given the importance of the right in question and its inviolable nature.¹⁰

⁹ See general comment No. 35 (2014), para. 35. See also, inter alia, *Boucherf v. Algeria*, communication No. 1197/2003, 30 March 2006, para. 9.5; *Medjnoune v. Algeria*, communication No. 1297/2004, para. 8.7; *Chani v. Algeria*, communication No. 2297/2013, 11 March 2016, para. 7.5.

¹⁰ See the individual (concurring) opinion by Mr. Olivier de Frouville, Mr. Yadh Ben Achour, Mr. Mauro Politi and Mr. Víctor Manuel Rodríguez-Rescia contained in the annex to the Committee's Views in *Chani v. Algeria*, op. cit.