



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2317/2013^{*, **}

<i>Communication submitted by:</i>	Kayum Ortikov (represented by Mutabar Tadjibayeva, International Human Rights Association 'Fiery Hearts Club')
<i>Alleged victim:</i>	the author
<i>State party:</i>	Uzbekistan
<i>Dates of communication:</i>	14 July 2013 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decisions, transmitted to the State party on 11 December 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	26 October 2016
<i>Subject matter:</i>	Right not to be subjected to torture or to cruel, inhuman or degrading treatment; arbitrary arrest and detention; fair trial; right to effective remedy.
<i>Procedural issue:</i>	Exhaustion of domestic remedies; substantiation of claims; evaluation of facts and evidence.
<i>Substantive issues:</i>	Torture; torture – prompt and impartial investigation; arbitrary arrest-detention; effective

* Adopted by the Committee at its 118th session (17 October-4 November 2016).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

One individual opinion signed by one Committee member is appended to the present Views.

remedy; fair trial; fair trial – legal assistance; fair trial – right to be tried in one’s presence.

Articles of the Covenant: 2, 7, 9, 10, 14

Articles of the Optional Protocol: 2, 5 (2) (b)

1. The author of the communication is Mr. Kayum Ortikov, citizen of Uzbekistan, born in 1969. He claims that Uzbekistan has violated his rights under article 7 read alone and in conjunction with article 2, and articles 9 and 14 of the International Covenant on Civil and Political Rights. Although not specifically invoked by the author, the communication appears to also to raise issues under article 10 (1) of the Covenant. The Optional Protocol entered into force for Uzbekistan on 28 December 1995. The author is represented by counsel, Mutabar Tadjibayeva, of the international human rights association Fiery Hearts Club.

The facts as submitted by the author

2.1 The author is an army officer in reserve and from 2004 till 2008 he has been working as a security guard in the embassy of the United Kingdom in Tashkent. In May 2008, he assisted 11 men from his native village in concluding work contracts with a Russian employer through an agency in Tashkent. The author had no profit from the deal and acted on the request of these men. Having worked for three months in Russia, the men returned to Uzbekistan, having not been paid for the last two months and 7 of them submitted complaints against the author to the Kashkadarynsky regional Department of National Security, the regional Prosecutor’s Office and the Department of Internal Affairs requesting the unpaid salaries from the author. On 10 September 2008, the author paid 500 USD to each of the 7 claimants. After that the claimants withdrew their complaints submitted to the state agencies.

2.2 At the end of September 2008, the author was summoned to the Kashkadarynsky regional police office and had to provide explanations on the submitted complaints and their subsequent withdrawal. On 25 December 2008, the author was summoned to the Chilanar district police office where he was charged with trafficking in persons. The author rejected the charges, refused to sign the respective documents in the absence of his lawyer, and instead wrote that he did not agree with the charges. Then the author was placed, without any procedural documents, in a confinement cell in the basement of the police building. On 26 December 2008, the author’s brother unsuccessfully sought the author’s release on bail. On 27 December 2008, the author was visited by his lawyer, Mr. Allanazarov. On 29 December 2008, the author was brought to the Chilanar District Court, which approved his detention. The author’s lawyer was not informed in time about the hearing. The author was represented by a state-appointed lawyer whose name he did not know, who was not familiar with his case and who did not speak in court. The ensuing requests of the author to see his lawyer were ignored and they met only during the first day of the trial on 15 January 2009.

2.3 On 29 January 2009, the Chilanar District Court found the author guilty of trafficking of persons under article 135 (2) (b, e, f, h, i) of the Criminal Code and sentenced him to 6 years in prison.¹ During the hearing, the alleged victims testified that they had

¹ Article 135. Trafficking in Persons

‘Trafficking in persons’ is an action of selling-buying a human being, his/her recruitment, transportation, transfer, harbouring or receipt for the purpose of exploitation.

The same actions committed

b) towards two or more persons;

withdrawn their complaints and had no claims to the author after he had paid their salaries. Their testimonies were not taken into account by the court. Responding to the question from the author's lawyer about the reason for such an unfair sentence, the judge said that there was an instruction 'from above' and he could not do anything about it.

2.4 On an unspecified date in 2009, the alleged victims appealed the decision of the Chilanzar District Court of 29 January 2009 to the Tashkent City Court. The victims were represented by the author's lawyer Mr. Allanazarov. In the appeal they stated again that they had no claims against the author and that he should be acquitted. On 3 March 2009, the court rejected the appeal and maintained the decision of the trial court. The author did not take part in the proceedings, although he was brought to the court building and remained detained in the basement for the duration of the proceedings.

2.5 From 8 February to 7 September 2009, the author was held in the pre-trial detention facility No. 64/1 of the city police department in Tashkent, in contradiction to the national legislation, according to which a convicted person should be transferred to a prison at the latest 10 days after the court verdict has been communicated to the administration of the detention facility. Until the beginning of August 2009, he claims that he was subjected to severe forms of torture by the officers from the National Security Service and police, as well as by the detainees acting upon instructions from these officers. Among other, the author was beaten with fists and an iron bar; kicked in the abdomen, chest and legs; stripped naked; hung by his ankles (so-called "helicopter position"); burned with fire on his genitals and other parts of his body; electroshocks were applied to his genitalia and lips and needles were inserted under his fingernails. On one occasion, the author was hung on a grid attached to the wall, stripped naked, and beaten with a wooden stick on his genitals. On another occasion, a rope ring was put around his neck with the other end of the rope being tied to his genitals from the back, and he was hung in this position from the ceiling with his hands tied. In addition, he was stripped naked and strapped on an iron bed for ten days, his arms, legs, abdomen and neck tied to the bed. He was put in a cell together with prisoners with tuberculosis and HIV/AIDS. Furthermore, psychological pressure was put on him and he was threatened with being tortured to death and with sexual violence. As a result of the beatings, the author had a number of bruises on his chests, hematomas on his head and fingers and was losing consciousness repeatedly. His genitals and lips were seriously injured due to the burning and the electroshocks and two ribs on the right side were broken. The author attempted to commit suicide on two occasions: first by biting the veins on his left wrist and second, by cutting the arteries in his throat and by cutting the head from the top to the forehead with a razor. According to the author, the purpose of the torture was making the author confess that he was spying for the United Kingdom and provide information on his colleagues.

2.6 On 4 May 2009, the author's lawyer was able to visit him in the detention for the first time. Until then, the author's requests to be visited by his family and the lawyer had been ignored. On this date the author's family learnt that he was subjected to torture. On 24-25 May 2009, the officers from the Prosecutor General's Office visited the detention facility after having received a telegram from the author's wife about the author's ill-

e) repeatedly or by a dangerous recidivist;

f) upon prior coordination with a group of people;

h) through transportation of the victim across the state border of the Republic of Uzbekistan or through keeping him/her abroad unlawfully;

i) through using false documents, as well as through seizing, hiding or destroying of the identity documents of the victim...

Are punished by deprivation of liberty from 5 to 8 years.

treatment. After the safety of his family was threatened, the author was forced to write a note addressed to the Prosecutor General, stating that he had not been tortured.

2.7 On 19 May 2009, the author's wife went to the detention facility No. 64/1 and requested a meeting with the author. The deputy Head of the facility brought her a note, written by the author, which stated that the author refused to see his family. The author's wife was able to visit him for the first time on 8 October 2009, after his transfer to prison. According to her, he was extremely thin, his body was covered with scars and he lost any will to live.

2.8 On 7 September 2009, the author was transferred to prison No. 64/29 in Navoi. On 2 February 2010, he was reprimanded for violating the prison schedule. On 5 April 2010, after the visit of the International Committee of the Red Cross to the prison, the prison officers questioned the author about information he has transmitted to the Red Cross. They beat the author in the soles of the feet with a rubber stick and then reprimanded him for violating the prison schedule and locked him for 5 days in solitary confinement. The author alleges that these actions were aimed at driving him to suicide.

2.9 From 4 May 2009, the author's family submitted numerous complaints about his ill-treatment, failure to transfer him to prison from the detention facility, and the authorities' refusal to allow the family and the lawyer to visit him, to the Prosecutor General's Office, the Chief Directorate for the Enforcement of Punishments, the Tashkent City Police Department, the National Security Service, the Supreme Court, the Ombudsman, the Cabinet of Ministers, the Ministry of Justice, the Parliament etc. The replies they received from the state institutions briefly stated that the author's sentence was in accordance with the law and justified. The allegations of torture were not addressed.

2.10 The 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.

2.11 On 4 May 2011, the author was conditionally released on the basis of a court decision. In March 2012, the term of the conditional release ended. On 5 August 2012, the author arrived in Kyiv, Ukraine, and applied for refugee status. From 2 to 23 October 2012, the author has been treated in a public hospital in Kyiv with the diagnosis of post-traumatic stress disorder, chronic prostatitis and varicose veins travelling on the right spermatic cord. The author was treated in the same hospital from 27 August to 6 September 2013 due to worsening of his mental condition (stress disorder with psychotic symptoms on the background of cerebral dysfunction).

The complaint

3.1 The author alleges that he was subjected to torture while held in the pre-trial detention facility No. 64/1 in Tashkent and that since he had no contact with the outside world, no remedies were available to him. He claims a violation of article 7 read alone and in conjunction with article 2 of the Covenant in this regard.

3.2 The author alleges that the State party violated article 9 of the Covenant by holding him from 25 to 29 December 2008, in pre-trial detention facility No 64/1 without proper arrest order; by holding him in 'incommunicado' detention from 8 February to 4 May 2009 in the detention facility No. 64/1; and by keeping him in the pre-trial detention facility for months instead of transferring him to prison within maximum 10 days after the final court

verdict was received by the administration of the pre-trial detention facility, in violation of national legislation.

3.3. The Committee considers that the author's claim concerning the impossibility for his family and lawyer to visit him in the pre-trial detention facility until 4 May 2009, also appears to raise issues under article 10 (1) of the Covenant.

3.4. The author claims that his rights under article 14 of the Covenant were violated because he had no meeting with his lawyer before the trial; because he was convicted despite the fact that the victims withdrew their complaints and confirmed during the court hearing that they had no claims against the author; and because the court did not provide any explanation for having established his guilt under article 135 (2) (b, e, f, h, i) of the Criminal Code. Thus, the author claims that he had never before been convicted for trafficking in persons and was not a recidivist (art. 135 (2) (e)); that he had no prior agreement with others and that the owners of the recruitment agency which arranged the employment of the victims in the Russian Federation were never charged or brought to the court hearing as witnesses (art. 135 (2) (f)); that he had not transferred the victims across the border or held them against their will abroad (art. 135 (2) (h)); and that he had not used false documents, seized or destroyed the identity documents of the victims (art. 135 (2) (i)).

State party's observations on admissibility

4. By *note verbale* of 30 December 2013, the State party submitted its observations, arguing that the communication was inadmissible. According to the State party, the author has neither raised the issues under articles 7, 9 and 14 of the Covenant before, nor had he appealed his sentence to the Supreme Court. The State party further submitted that the author's complaints to the domestic authorities were based on the provisions of national legislation and not on the articles of the Covenant. According to the State party the submission was unsubstantiated for the purpose of admissibility and all of the author's arguments concerned evaluation of facts and evidence and interpretation of national legislation. The author provided no reasons of why evaluation of facts and evidence by the domestic authorities and courts was in violation of the provisions of the Covenant and amounted to a denial of justice. In fact, the author asked the Committee to act as a judicial authority and to consider his submission in the light of the national legislation, which the Committee is not in a position to do. The State party finally stated that the author's claims were incompatible with the provisions of the Covenant and that in the view of the above observations, his communication should be considered inadmissible.

Author's comments on the State party's observations

5. By letter of 3 March 2014, the author commented on the observations of the State party submitting that he was kept in 'incommunicado' detention and did not have access to lawyer from February 2009 to 4 May 2009. Because of this and due to the torture he was subjected to in detention and the threats he received, he had no possibility to submit a complaint to the state authorities. However, his family complained as soon as they found out about the torture he experienced. The author claimed that the State party had an obligation to carry out an effective investigation into allegations of torture even if the alleged victim had not filed an official complaint.²

² The author refers to Communication No. 6/1990, *Henri Unai Parot v. Spain*, Views adopted by the Committee against Torture on 2 May 1995, para. 10.4; and Communication No. 59/1996, *Encarnación Blanco Abad v. Spain*, Views adopted by the Committee against Torture on 14 May 1998, para. 8.6.

State party's additional observations

6.1 On 21 March 2014, the State party submitted additional observations and stated that the author's allegations concerning his unlawful detention and torture have been thoroughly considered and found groundless.

6.2 The State party proceeded to describe the facts of the author's criminal case and stated that his conviction was based on the complaints submitted by the victims and that his guilt was established during the investigation on the basis of victims and witness testimonies, confrontation records and other objective evidence, and that his actions under article 135 (2) (b, e, f, h, i) of the Criminal Code were correctly qualified by the court. On 4 May 2011, the author was conditionally released by the decision of the Karman District Court in Navoi Region.

6.3 Addressing the author's allegation about unlawful detention between 25 and 29 December 2008, the State party clarified that on 25 December 2008, the author was informed about being a suspect in committing a criminal offence under articles 168 (2) (fraud) and 153 (3) (trafficking in persons) of the Criminal Code. On 26 December 2008, he was arrested on the basis of a Decree of a senior investigator of Chilanzar district police office in Tashkent. The author was familiarized with and signed the relevant document. The author's relatives were informed about the arrest in a timely manner. On 27 December 2008, the author was indicted under article 135 (2) (b, e, f, h, i) of the Criminal Code and on the same date the Chilanzar District Court issued a ruling authorizing the author's detention. During the hearing the author was represented by a state-appointed lawyer in view of absence of his chosen lawyer. The State party submitted that author's detention in the police pre-trial detention facility during the period described in the submission was in accordance with the law.

6.4 The State party stated that following the complaint of 8 May 2009 by the author's brother concerning torture of the author in detention, the Chief Directorate for the Enforcement of Punishments carried out an investigation but did not find any proof of the allegations of ill-treatment.

6.5 Addressing the author's allegation concerning refusal of the administration of the detention facility to allow visits by his family and the lawyer, in particular a visit requested by the author's wife on 19 May 2009, the State party referred to the law on detention during criminal proceedings, according to which the authorization to visit a person in pre-trial detention can be granted by the officer or the institution in charge of the criminal investigation in question. According to the State party, the detention facility administration is not in a position to authorize visits.

6.6 To the author's allegations of torture in detention, the State party replied that the author has undergone entry medical examination in the detention facility and has not requested medical assistance while in detention. Upon transfer to prison No. 64/29, a surgeon, general practitioner, psychiatrist and a dentist have examined the author. There were no scars or burns detected on his body. Medical examinations carried out on 25 February and 25 May 2010, have not reported any deterioration of the author's health.³

6.7 The State party clarified that the author has been reprimanded on 11 February 2010 for repeated breach of the prison rules, such as failure to maintain in order his working place, reluctance to keep clean his cloths and wear a uniform, as well as repetitive quarrels with the officers on these matters. Since the author has not taken the reprimand into account

³ The State party has not provided any supporting documents concerning this statement. It has not provided any documents on any of the three submissions.

and continued to breach the rules, on 15 April 2010, he was placed in solitary confinement for 5 days. The State party also submitted that contrary to what the author claimed, on 10 April 2010, the delegates of the Regional Delegation of the International Committee of the Red Cross did not visit prison No. 64/29 and that the author has not be subjected to any unlawful treatment on this or any other date.

6.8 On the basis of the above information, the State party submitted that the author's complaints were unsubstantiated.

Author's additional comments to the State party's observations

7.1 On 19 August 2015, the author submitted comments to the State party's observations. Responding to the State party's argument about the investigation carried out by the Chief Directorate for the Enforcement of Punishments, which had not revealed any signs of the author's ill-treatment in detention, the author stated that the State party has failed to provide any details of such investigation. Similarly, the State party has not submitted any procedural documents on the criminal investigation which led to his conviction.

7.2 The author reiterated his previous submission concerning impossibility to access the remedies due to his 'incommunicado' detention. Commenting on the State party's observation that the medical doctors who examined him upon the transfer to prison No. 64/29 have not found any signs of torture on his body, the author submitted that according to the Committee's recommendations, the State party should provide independent medical examination following the allegations of torture.⁴

7.3 The author further stated that from 25 to 29 December 2008, he was held in police detention without proper procedural documents authorizing his arrest. In response to the State party's argument that the detention in the pre-trial detention facility No. 64/1 was according to the law, the author submitted, that according to article 54 of the Criminal Implementation Code, a convicted person has to be transferred to the prison no later than 10 days after the receipt of the final court sentence by a pre-trial detention facility. The author has been kept in pre-trial detention facility until 7 September 2009, although the appeal court pronounced the final sentence in his case on 3 March 2009.

State party's further observations

8.1 On 11 December 2015, the State party submitted additional information in response to the author's comments. According to the State party, the author was represented by a lawyer at all stages of criminal proceedings. On 25 December 2008, the author was informed about being a suspect in committing a criminal offence and on the same date he was questioned by an investigator, as a suspect in a criminal case, in the presence of a lawyer. On 26 December 2008, he was arrested on the basis of a Decree of a senior investigator; he and the lawyer have signed the document stating that they were familiarized with the Decree. The author's detention was authorized by a court, in presence of a lawyer, on 27 December 2008.

8.2 The lawyer contracted by the author, appealed the decision of the first instance court on 9 February 2009, however on 27 February 2009, when the appeal hearing was to take place, he withdrew the appeal. This is why the author has not participated in the subsequent court hearings initiated by the victims.

⁴ Among other, the author refers to the Concluding observations of the Human Rights Committee on Hungary, CCPR/C/HUN/CO/5, 2010, para. 14; Communication No. 595/2000, *Saimijon and Bazarov v. Uzbekistan*, Views adopted on 14 July 2006, para. 8.3.

8.3 The victims in the case appealed asking for lesser punishment for the author and their appeal was rejected on 3 March 2009. On 11 May 2009, the cassation appeal submitted by the author's counsel and on 10 December 2009, the appeal under the supervisory review proceedings, submitted by the author's wife to the Supreme Court, respectively, were rejected.

8.4 The State party notes that the medical documents submitted by the author did not provide detailed medical assessment. They only reflected the author's own statement about his broken ribs and the pain in lower back and scrotum that developed gradually after his release from prison.

8.5 The State party reiterated its position that the author's rights under articles 7, 9 and 14 of the Covenant have not been violated.

Issues and proceedings before the Committee

Considerations of admissibility

9.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

9.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

9.3 The Committee notes the author's claims under article 9 of the Covenant, that he was detained unlawfully from 25 to 29 December 2008, in the Chilanzar district police office. It also notes the author's complaint under article 14 of the Covenant concerning the lack of access to lawyer of his choice before the trial. The Committee also notes the State party's general observation that the author has not raised before the courts the claims he raised before the Committee and thus has not exhausted domestic remedies. The material before the Committee supports the State party's position according to which the author has failed to raise the particular claims relating to the initial period of detention and access to lawyer of his choice before the trial before national courts. The Committee therefore considers that this part of the complaint is inadmissible under article 5 (2) (b) of the Optional Protocol.

9.4 The Committee further notes the author's claims concerning a violation of his right to fair trial under article 14 of the Covenant regarding his conviction under article 135 (2) (b, e, f, h, i) of the Criminal Code. It also notes the corresponding argument of the State party that the author has appealed the trial court judgment to the Supreme Court, but withdrew the appeal before the Court decided on it. In the absence of an adequate explanation by the author for his failure to exhaust the appeal proceedings, and in the absence of information on the nature of the cassation proceedings pursued on behalf of the author and its relationship to the appeal proceedings, the Committee is not able to find that the author has exhausted domestic remedies with respect to his claims under article 14 of the Covenant. The Committee thus considers that this part of the complaints is also inadmissible under article 5 (2) (b) of the Optional Protocol.

9.5 The Committee finally notes the author's claim concerning his treatment in the pre-trial detention facility No. 64/1, his allegations that his family and lawyer were not allowed to visit him while he was detained there, and that he was not promptly transferred from a pre-trial detention facility to prison, as prescribed by national legislation. The Committee observes that the author's relatives have repeatedly raised these matters in their complaints to various state authorities, including the Tashkent City Court and the Supreme Court, but

to no avail. The Committee also notes the author's allegation that he himself could not complain of the ill-treatment while in detention due to the threats against him and his family. In the absence of information from the State party on any effective remedies that would have been available to the author relating to his treatment while in detention, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the merits of this part of the author's claims under article 7, read alone and in conjunction with article 2, and articles 9 and 10 (1) of the Covenant.

9.6 The Committee considers that the author's claims under article 7, read alone and in conjunction with article 2, the remaining claims under article 9, and article 10 (1) of the Covenant have been sufficiently substantiated, for purposes of admissibility, and proceeds to consider the communication on its merits.

Considerations of the merits

10.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

10.2 The Committee takes note of the author's allegation of torture in the police pre-trial detention facility No. 64/1 in Tashkent from February to August 2009. The Committee notes the observations of the State party that following a complaint from the author's brother dated 8 May 2009, the Chief Directorate for the Enforcement of Punishments carried out an investigation but did not find any proof of the allegations of ill-treatment. It also notes that the medical documents submitted by the author suggest a number of injuries but do not specify their source and origin. The Committee notes, however, that the State party has not provided specific details on the investigation carried out by the Chief Directorate for the Enforcement of Punishments. Nor has it provided to the Committee any documents supporting its statements on the health of the author upon his entry into prison and exit therefrom. The Committee additionally observes that the author was subject to an extended period of incommunicado detention (almost three months), a fact which the State party did not contest, and which in itself can amount to a form of torture or cruel, inhuman and degrading treatment or punishment, especially when the length of such period of incommunicado detention has not been prescribed by a legal authority and is, in effect, indefinite.⁵ It further notes that the author's family has lodged at least 12 complaints (attached to the original submission) about his treatment in detention to various state authorities, including the Prosecutor General's Office, the Tashkent City Police Department, the National Security Service, and the Supreme Court, but no information was provided to the complainants about any investigative steps taken by these authorities in connection with these complaints. In the light of the above, and taking into account the specificity of the author's allegations about the multiple acts of torture he was subjected to in the pre-trial detention facility No. 64/1 as well as the failure of the State party to refute these allegations with proper documentary evidence, and considering the specific context of the author's prolonged detention in the pre-trial facility, contrary to the requirements of domestic law, which has not been explained by the State party,⁶ and the State party's failure failed to carry out an effective investigation into the author's allegations of torture the Committee finds a violation of the author's rights under article 7 of the Covenant read alone and in conjunction with article 2 (3) of the Covenant.

⁵ See Communication No. 992/2001, *Louisa Bousroual v. Algeria*, Views adopted on 30 March 2006, para 9.8; Communication No. 2297/2013, *Mejdoub Chani v. Algeria*, Views adopted on 11 March 2016, para 7.3.

⁶ See the Committee's General comment No. 20, para 11; Communication No. 992/2001, *Louisa Bousroual v. Algeria*, Views adopted on 30 March 2006, para 9.8.

10.3 The Committee notes the author's allegation that his rights under article 9 of the Covenant were violated because he was kept in a police pre-trial detention facility from 8 February 2009 until 7 September 2009, while under article 54 of the Criminal Implementation Code of Uzbekistan, a convicted person has to be transferred from a pre-trial detention facility to a prison at the latest 10 days after the final sentence of the court has been received by the detention facility. Having received no clarification on this claim from the State party, the Committee concludes that the author's detention in the pre-trial facility No. 64/1 was not in accordance with such a procedure as established by law. The Committee therefore finds a violation of the author's rights under article 9 (1) of the Covenant.

10.4 The Committee notes the author's claim concerning his prolonged 'incommunicado' detention in pre-trial detention facility No 64/1 from 8 February 2009, that his lawyer was allowed to visit him for the first time on 4 May 2009, and that his wife saw him only on 8 October 2009, after his transfer to prison. The State party has not refuted the author's claim, but argued that the author has refused to receive visits by his family. In view of its earlier finding about the inadequate response by the State party to allegations that the author's rights under article 7 of the Covenant were violated, the Committee cannot attribute much probative value to the reported refusal by the author to receive family visits. It also notes that it was not claimed by the State party that the author refused to receive visits by his lawyer. The Committee reiterates that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated with humanity and respect for their dignity.⁷ It also observes that incommunicado detention is inconsistent with the obligation to treat detainees humanely and with respect for their dignity.⁸ In light of the above, the Committee finds that holding the author in prolonged incommunicado detention, without access to the outside world, also violated his rights under article 10 (1) of the Covenant.

11. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses a violation by the State party of the author's rights under article 7, read alone and in conjunction with article 2 (3), and of articles 9 (1) and 10 (1) of the Covenant.

12. 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. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to: (a) conduct a thorough and effective investigation into the author's allegations of torture; (b) prosecute, try and, if confirmed, punish those responsible for the torture of the author; (c) provide compensation to the author for the violations suffered. The State party is also under an obligation to take all necessary steps to prevent the occurrence of similar violations in the future.

13. 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 and 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

⁷ See general comment No. 21 [44] on article 10, para. 3; communication No. 1780/2008, *Mérim Zarzi v. Algeria*, Views adopted on 22 March 2011, para. 7.8; and communication No. 1753/2008, *Guezout and Rakik v. Algeria*, Views adopted on 19 July 2012, para. 8.8.

⁸ Communication No. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 Oct. 2011, para. 8.8.

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 present Views, and to have them widely disseminated in the State party.

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.