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Communication No. 1972/2010

Views adopted by the Committee at its 112th session (7–31 October 2014)

<i>Submitted by:</i>	Ali Djahangir oglu Quliyev (represented by counsel, Eldar Zeynalov)
<i>Alleged victims:</i>	The author
<i>State party:</i>	Azerbaijan
<i>Date of communication:</i>	24 June 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 13 August 2010 (not issued in document form)
<i>Date of adoption of decision:</i>	16 October 2014
<i>Subject matter:</i>	Torture in pretrial detention; inhuman conditions of detention; unfair trial; commutation of a death sentence into life imprisonment at a time when life imprisonment was not provided by law
<i>Procedural issues:</i>	Admissibility <i>ratione temporis</i> ; exhaustion of domestic remedies; claim examined under another procedure of international investigation or settlement
<i>Substantive issues:</i>	Torture, fair trial, inhuman treatment; heavier penalty imposed than the one that was applicable at the time when the criminal offence was committed; right to appeal
<i>Articles of the Covenant:</i>	7, 10 (paras. 1 and 3), 14 (paras. 1, 3 (d), 5 and 6) and 15 (para. 1)
<i>Articles of the Optional Protocol:</i>	2 and 5 (paras. 1 and 2 (b))

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (112th session)

concerning

Communication No. 1972/2010*

Submitted by: Ali Djahangir oglu Quliyev (represented by counsel, Eldar Zeynalov)

Alleged victims: The author

State party: Azerbaijan

Date of communication: 24 June 2010 (initial submission)

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

Meeting on 16 October 2014,

Having concluded its consideration of communication No. 1972/2010, submitted to the Human Rights Committee by Ali Djahangir oglu Quliyev under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views pursuant to article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Ali Djahangir oglu Quliyev, a national of Azerbaijan born in 1957. He claims to be a victim of a violation by Azerbaijan of his rights under articles 7, 10 (paras. 1 and 3), 14 (paras. 1, 3 (d), 5 and 6) and 15 (para. 1) of the International Covenant on Civil and Political Rights. The author is represented by counsel, Eldar Zeynalov. The Optional Protocol entered into force for Azerbaijan on 27 February 2002.

The facts as presented by the author

2.1 The author used to work as a senior operator for the Experimental Industrial Factory of the Institute of Oil and Chemistry at the National Academy of Sciences of Azerbaijan. In

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Christine Chanet, Ahmed Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Zonke Zanele Majodina, Gerald L. Neuman, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioi, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.

1989, a police investigation revealed that some of his colleagues were part of a gang involved in violent crimes since 1979. The gang operated in Azerbaijan, Russia and the Georgian Soviet Socialist Republic. On 5 September 1989, the gang reportedly killed F. Shiraliyev, the Chief Director of the Bakipive manufacturing group. The author submits that some of the gangsters testified, under torture, that he had committed the murder. He was arrested on 11 September 1989. Although he was accused of a common crime, the author was detained in isolation in a prison of the State Security Committee and at the Police Department of the Absheron district, Baku city. He was severely tortured so that he would confess the murder and, as a result of that torture, his ribs were broken and one of his kidneys was damaged. On 26 December 1989, he attempted to commit suicide in the State Security Committee prison.

2.2 The author maintains that, during the investigation, several pieces of evidence were disregarded, such as: an alibi provided by a neighbour for the author for the time of the commission of the murder; conflicting conclusions of forensic ballistic expert analyses, one of which stated that the murder weapon was the author's revolver and the other, conducted by an expert of the Ministry of Internal Affairs of the Union of Soviet Socialist Republics (USSR) in October 1990, stating that no definite conclusion could be made on that issue; and the testimony of the author's employer, stating that he was present at work during most of the time when the crime had been committed.

2.3 The Investigation Department of the Office of Procurator of the Azerbaijan Soviet Socialist Republic charged the author under the Criminal Codes of three Socialist Republics (the Criminal Codes of Azerbaijan, of the Russian Soviet Federative Socialist Republic and of the Georgian Soviet Socialist Republic). The case was tried before the Baku City Court. During a trial hearing, the author and his four co-defendants retracted their confessions, alleging that they had been forced to confess under torture. They demanded the investigation of their torture allegations and the examination of additional evidence, but the court refused and used teargas against the defendants, who were locked up in a cage. The author also alleges that his lawyers were "pressed" by the Bar Association and one of them was beaten. As a "gesture of protest" the defendants refused the assistance of the lawyers, since their services had become "useless". The judge presiding over the trial removed the five defendants from the courtroom for "violation of order" and, for the next four months, both the author and his lawyers were barred from attending the court hearings.¹ The author maintains that the above constituted a violation of the domestic criminal procedure which requires the accused who might be sentenced to the death penalty to be present during the trial.

2.4 On 18 October 1991, Azerbaijan declared its independence with the Constitutional Act No. 222-XII on the State Independence of the Republic of Azerbaijan. Article 15 of the Constitutional Act prohibited the application of any foreign law on the territory of Azerbaijan. Nevertheless, on 12 November 1991, the author was convicted in absentia and sentenced to death by the Baku City Court, based on charges under the Criminal Codes of Azerbaijan, of the Russian Soviet Federative Socialist Republic and of the Georgian Soviet Socialist Republic. That sentence was final and could not be appealed to a higher court. According to article 402 of the Criminal Procedural Code of Azerbaijan in force at the time, court sentences that had entered into force could be reviewed only upon the request of the Procurator General, the President of the Supreme Court or their deputies. In the author's case, none of those officials requested that the case be reviewed.

2.5 The author was detained in Bayil prison in the ward used only for prisoners on death row. The author submits that he was subjected to the "syndrome of death row" for six and a

¹ The author provides a copy in Russian of a newspaper describing the event.

half years and that the conditions of detention on death row were described in communication No. 247/2004, *A.A. v. Azerbaijan*.² He also submits that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited Bayil prison in 2002, when it was in much better condition, and found that the conditions of detention there were “inappropriate”.³ In 2009 the Bayil prison was demolished.

2.6 On 10 February 1998, the National Assembly adopted the Law amending the Criminal Code, the Code of Criminal Procedure and the Correctional Labour Code of the Republic of Azerbaijan in connection with the abolition of the death penalty in Azerbaijan. Under section IV of that law, the sentences of individuals convicted to death, including the author, were commuted to life imprisonment. On 30 December 1999, the Parliament adopted the law ratifying the Criminal Code of Azerbaijan, its entering into force and legal adjusting matters related thereto. Article 4.126 of that law stated that the 10 February 1998 law would lose its force as of 1 September 2000.

2.7 Following the adoption of the 10 February 1998 Law, the author’s sentence was commuted to life imprisonment and he was transferred to Qobustan prison. Although the conditions of detention were better than in the previous prison, the author considers that the regime of detention contradicted European standards and was degrading and inhuman. Between March 1998 and August 2000, he was allowed annually: two short family visits, two food parcels up to 10 kg and no phone calls. Between 1 September 2000 and 24 June 2008, he was allowed annually: two short and one long family visit, four food parcels up to 31.5 kg each and six phone calls up to 10 minutes each. After 24 June 2008, he was allowed annually six short visits, two long visits, eight food parcels and 24 phone calls. The daily exercise in the walking court of the prison, which officially should last for one hour, most often is reduced to half an hour.

2.8 The author contends that the conditions of his detention in the Qobustan prison are in line with domestic standards, but do not comply with European standards. He maintains that for that reason “hypothetic court proceedings on the issue would have no perspective” and refers to the assessment of conditions of his detention given by the United Nations and the Council of Europe.⁴ He submits that his cell contains a double-decked plank bed, a small table and two chairs (the legs of which are cemented into the floor) and a bedside table. The cell contains a toilet, fenced only by a one-metre-high wall. The cell’s walls, ceiling and floor are made entirely of concrete, resulting in it being very hot during the summer and cold during winter. Furthermore, the author submits that during winter the heating is insufficient. The cell has one window made out of polyethylene film instead of glass. The author submits that the size of the window is smaller than required by the national prisons standards and that he was deprived of adequate natural ventilation and light. He also submits that the prison food is monotonous, misbalanced, poor on meat and

² The author appears to refer to the communication No. 247/2004 submitted to the Committee against Torture, *A.A. v. Azerbaijan*, decision on admissibility adopted on 25 November 2005, paras. 2.3–2.9.

³ The author refers to European Committee for the Prevention of Torture, Report to the Azerbaijani Government on the visit to Azerbaijan carried out by the from 24 November to 6 December 2002, CPT/Inf (2004) 36, paras. 77–87. Available from www.cpt.coe.int/documents/aze/2004-36-inf-eng.pdf.

⁴ The author makes references to European Committee for the Prevention of Torture, Second General Report on the CPT’s activities covering the period 1 January to 31 December 1991, CPT/Inf (92) 3, para 4.3 (available from www.cpt.coe.int/en/annual/rep-02.htm); the report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43 (E/CN.4/2001/66/Add.1) of 14 November 2000; and concluding observations of the Committee against Torture (CAT/C/AZE/CO/3), 19 November 2009, para. 11.

vitamins and below the nationally established standards. The author refers to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2000 (E/CN.4/2001/66/Add.1), which notes that no recreational or educational activities were available in the Qobustan prison (*ibid.*, para. 55), and to the 2003 recommendation of the Committee against Torture to the Government to review the treatment of prisoners serving life sentences (CAT/C/CR/30/1, para. 7 (l), and Corr.1). He further refers to the concluding observations of the Committee against Torture of 2009 (CAT/C/AZE/CO/3), which state that it “regrets the lack of information provided with regard to the mechanism or legal provision through which detainees may request a medical examination by an independent doctor, and remains concerned at allegations that access to medical care is frequently denied” (*ibid.*, para. 11). He also refers to a number of reports of governmental and non-governmental organizations expressing concern regarding the prison conditions in Azerbaijan.⁵

2.9 From 1991 until 2000, the author had no possibility of appealing the judgement of the Baku City Court. On 1 September 2000, with the abolition of the old criminal codes, re-consideration of final judgements became possible. After several exchanges of correspondence with the judiciary, the author was able on 5 June 2005 to lodge a cassation appeal. The case was examined on 20 September 2005 by a panel of judges of the Supreme Court, which rejected his appeal and confirmed the 12 November 1991 verdict. On 24 October 2005, the Plenum of the Supreme Court reviewed the 20 September 2005 decision and confirmed the 1991 verdict, replacing the death penalty with life imprisonment, based on the 10 February 1998 law. The author was not present during those proceedings and his lawyer was only allowed to participate in the 20 September 2005 hearing before the panel of Supreme Court judges. He maintains that the above violated the equality of arms principle, because the prosecutor participated in the 24 October 2005 hearing, but the author was not notified of the hearing.

2.10 On 8 August 2005, the author filed an appeal before the Qaradag District Court claiming that the imposition of life imprisonment instead of the death sentence contradicts article 11 (para. 2) of the Universal Declaration of Human Rights, article 7 (para. 1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and provisions of the domestic Codes of Criminal Procedure of 1960 and 2000. On 24 October 2005 (the same date as the decision of the Supreme Court), the Qaradag District Court reviewed the author’s appeal, comparing the penalties provided for under the 1960 Code and the 2000 Code. The Court reduced the penalties for some of the crimes, since under the

⁵ The author refers to: Council of Europe, “Council of Europe Anti-Torture Committee visits Azerbaijan”, news flash, 6 December 2006 (available from www.cpt.coe.int/documents/aze/2006-12-06-eng.htm); International Federation of Human Rights and Human Rights Center Azerbaijan, “Après l’abolition de la peine capitale, les condamnés à perpétuité en danger de mort. Torture et mauvais traitements dans les prisons d’Azerbaïdjan” (report of the field mission, available in French from www.fidh.org/IMG/pdf/Az465fr.pdf); Parliamentary Assembly of the Council of Europe, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), “Honouring of obligations and commitments by Azerbaijan”, report of 30 March 2007, document 11226, , paras. 188 and 189 (available from <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=11649&Language=en>); the Parliamentary Assembly of the Council of Europe, resolution 1545 (2007) on honouring of obligations and commitments by Azerbaijan (available from <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1545.htm>); and Penal Reform International, *Life Imprisonment and Conditions of Serving the Sentence in the South Caucasus Countries* (2009), pp. 55–62 (available from www.penalreform.org/wp-content/uploads/2013/05/South-Caucasus-Research-Report-Death-Penalty-and-Alternatives-ENGLISH.pdf).

new Code they were punishable with shorter prison terms. For the charges that were punishable by death under the old Code, the new Code foresaw different prison terms or life imprisonment. The Qaradag District Court imposed the life imprisonment sentence on the author for some of the charges, subsuming in that sentence the shorter prison sentences for the rest of the charges. On 31 October 2005, the author filed an appeal with the Appeals Court requesting it to quash the decision of the Qaradag District Court, and to impose the maximum penalty of 15 years' imprisonment. An addition to that appeal was submitted on 7 December 2005. The appeal was rejected on 9 December 2005, following a hearing at which neither the author nor his lawyer were present, but the Prosecution was summoned and presented its arguments. The decision was not delivered to the author until 19 January 2006, 40 days after its adoption, while the statutory deadline for its appeal was 30 days. The author, who was at the time hospitalized, filed a cassation appeal on 30 January 2006. He also filed, on an unspecified date, a motion for the statutory deadline to be restored, because the appeal decision had been served to him late. On 28 March 2006, the Supreme Court rejected the appeal, ruling that the missed statutory deadline could not be restored.⁶

2.11 On 17 January 2006, the author attempted to reopen the case based on newly established circumstances. On 3 March 2006, the Supreme Court's President rejected the application. In June 2007, the author attempted to lodge another appeal based on newly discovered circumstances, namely resolution 1545 of the Parliamentary Assembly of the Council of Europe, which urged "the authorities to ensure a case-by-case review of life sentences which were the result of the abolition of the death penalty and allow the persons concerned to benefit from the retroactive application of the more favourable criminal law provisions adopted in 2000"⁷ and to the case of an individual, whose death sentence, passed in 1994 had been replaced by 15 years' imprisonment.⁸ That appeal was rejected by the Supreme Court by a letter of 16 July 2007. Another appeal filed on 10 August 2007 with the Plenum of the Supreme Court was rejected on 6 September 2007.

2.12 In 2005, one of the individuals that had allegedly participated in torturing the author was arrested for violent crimes and subsequently sentenced to life imprisonment. Based on that fact, on 11 July 2006, the author submitted a request to the Prosecutor's Office, asking it to initiate a "cassation protest". On 10 August 2006, the Office of the Procurator General informed the author that his complaint had been sent for investigation to the Department for the Supervision of Investigations of the Office of Procurator General. On 18 September 2006, the Deputy Head of the Department of Supervision of Investigations of the Office of Procurator General responded that the allegations that the author had been tortured by the said individual were not confirmed.

2.13 With regard to the commutation of the death sentence into life imprisonment and the application of foreign law in Azerbaijan, the author filed a series of complaints to the Constitutional Court which were all rejected.

2.14 After all domestic remedies had been exhausted, the author submitted a complaint to the European Court of Human Rights. On 28 November 2008, a committee of three judges rejected the complaint as inadmissible on the basis of articles 34 and 35 of the Convention without elaborating further its decision.

⁶ The author submits that one of the judges on the panel had passed numerous death sentences in the 1990s.

⁷ Resolution 1545 (2007) (see note 4 above), para 8.9.

⁸ The author refers to the case of Igor Kryzhanovski, a decision of a Russian Federation court regarding a prisoner transferred from Azerbaijan to serve his sentence.

The complaint

3.1 The author considers that the State party violated his rights under articles 7, 10 (paras. 1 and 3), 14 (paras. 1, 3 (d), 5 and 6) and 15 (para. 1) of the Covenant.

3.2 The author maintains that the conditions of detention in the Qobustan prison, where he was held at the time of the submission, were inhuman and degrading and that they did not meet the aim of reformation and social rehabilitation, thus violating articles 7 and 10 (paras. 1 and 3) of the Covenant.

3.3 The author contends that he was denied a fair trial. He had been tortured in detention so that he confessed to a crime he did not commit. The author further contends that the investigation and the courts did not take into account the testimony of his neighbour, which provided him with an alibi for the day and time of the murder, and that he was not allowed to participate in some proceedings in violation of the principle of mandatory participation of defendants during criminal proceedings (especially for grave crimes). Despite a change in national legislation instituting a Court of Appeal, that Court rejected the author's claim to have the Supreme Court's judgement reviewed. In the last series of proceedings in 2006, the author was deprived of his right to have his judgement reviewed by a higher tribunal. New circumstances/elements were not taken into account and examined despite the severe sentence imposed. Based on these facts the author maintains that his rights under article 14, (paras. 1, 3 (d), 5 and 6) of the Covenant were violated.

3.4 The author further argues that the commutation of his death sentence into life imprisonment violated article 15, paragraph 1, of the Covenant. In the author's opinion, he should have benefited from a sentence of 15 years, which was the highest penalty (except for the death penalty) provided by law at the time of commission of the offence, and which should have been the highest penalty applicable to his case after the death penalty was abolished.

The State party's observations on admissibility and merits

4.1 On 22 February 2011, the State party lists the charges against the author under the Criminal Codes of Azerbaijan, of the Russian Soviet Federative Socialist Republic and of the Georgian Soviet Socialist Republic that were in force at the time, and confirms that, on 12 November 1991, he was sentenced to the death penalty under several provisions of those codes. The State party further submits that the author's cassation appeal had been rejected by the Supreme Court of Azerbaijan on 20 September 2005. The State party maintains that the first instance court conducted a thorough, comprehensive and objective evaluation of the case, which is evidenced by the fact that the author was charged with 18 different offences and the court excluded 11 of those from the final verdict. The remaining charges had been confirmed by the evidence presented to the court. On 24 October 2005, the Plenum of the Supreme Court decided that the words "leave the verdict without changes" should be excluded from the 20 September 2005 decision of the Supreme Court and the death sentence should be replaced with life imprisonment based on the 10 February 1998 Law.

4.2 The State party submits that, following the author's complaint to the Office of the Procurator General that he had been beaten, the case file had been examined and the allegations could not be confirmed.

4.3 The State party submits that the beginning of the author's sentence is counted from the date of his arrest on 6 October 1989. The author had been transferred to the Qobustan prison on 5 January 2001. It further submits that the conditions of detention of convicts sentenced to life imprisonment have been improved after the entry into force on 1 September 2000 of the new Code of Execution of Sentences. The legislation was further amended on 24 June 2008 in order to bring the execution of sentences in line with the

European Prison Rules.⁹ Among other things, the number of visits, food parcels and phone calls had been increased, the censorship on correspondence and the prohibition of vocational training had been discontinued. At present, the work on improving living conditions continues. With regard to the author's submission, the State party maintains that he received all allowances provided by legislation and, after he had served 10 years of imprisonment, by a decision of the Prison administration of 10 May 2005 the conditions of his detention were improved and he received additional allowances that are still in place. After his arrival in the prison, the author was placed in the two-person cell No. 141 of ward 5. The dimensions of the cell are 2.55 m by 3.85 m, the height of the ceiling is 3.50 m and the windows are 1 m by 0.90 m. The above dimensions correspond both to the Code of Execution of Sentences and to the European Prison Rules. On 16 December 2001, the author was transferred to cell No. 143, where he remains to date. That cell has the same size as the previous; it has a Plexiglas window, which provides natural light; there is a ventilator above the door to provide for normal ventilation; a tube from the central heating, which ensures a normal temperature, goes through the cell. In the cell there are: a double-decked plank bed, a table with two seats bolted to the floor, two plastic chairs, a bookshelf, a television set and two bedside tables. The cell has all the conditions necessary for the normal serving of the sentence and it corresponds to the requirements of the international instruments on treatment of prisoners.

4.4 The State party submits that prisoners' food is prepared in accordance with the Council of Ministers Decree of 25 September 2001 regarding the material living conditions and nutrition of the convicts. The convicts receive hot food three times a day (3,265 kilocalories). The State party states that, at the time of its submission, there were no opportunities for the prisoners to work or engage in education, vocational training or sports. The State party further provides general information regarding the institutions and organizations authorized to visit the penitentiaries and to monitor the conditions of detention and the situation of the convicts. The State party maintains that during 2009–2010, during the visits of international and national organizations, no prisoners submitted any complaints regarding the conditions of detention.

4.5 The State party lastly submits that the Committee should declare inadmissible the claims of the author that concern events which have taken place before the entry into force of the Optional Protocol. It also notes that the author's application to the European Court had been rejected on 28 November 2008 as it did not correspond to the requirements of articles 34 and 35 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Author's comments on the State party's observations

5.1 On 28 April 2011, the author submits that the State party had confirmed that the initial death sentence had been imposed on him based not only on the Azerbaijani Criminal Code, but also on provisions from the Criminal Codes of the Russian Soviet Federative Socialist Republic and of the Georgian Soviet Socialist Republic. Regarding the charges under the Azerbaijan law, he notes that currently only one of the five offences for which he was convicted to death is punishable by life imprisonment (namely deliberate murder by a group of persons under aggravating circumstances) and the rest are punishable by shorter terms of imprisonment. Article 6 of the old Criminal Code and article 10.3 of the new Criminal Code both state that provisions of the criminal law which provide for a lighter penalty shall have retroactive application. The author maintains that the investigation

⁹ Council of Europe, recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies.

against him was conducted in violation of procedural law and the court was forced to exclude 11 of the 18 charges from the indictment and that, instead of issuing a verdict and convicting him to the death penalty, the court should have ordered a new investigation into the remaining charges. The author makes reference to cases he considers similar to his, in which the domestic courts had reviewed the sentencing and replaced the life imprisonment sentences with shorter prison terms. He submits that, since the judgments of the Panel and the Plenum of the Supreme Court had been adopted on 20 September 2005 and 24 October 2005, respectively, i.e. after the entry into force of the Optional Protocol, his claims are admissible.

5.2 As to the State party's argument that the author had filed an application before the European Court, the author notes that the above application had been rejected by a standard letter, without explanation of the reasons and refers to the Committee's jurisprudence, where in a similar case it had declared a communication admissible.¹⁰ He maintains that his claims are no longer being examined by the European Court and that they had never been examined on their merits and accordingly should be declared admissible.

5.3 The author also notes that the State party had confirmed that, although the majority of the prisoners serving life sentences had been transferred to Qobustan prison in March 1998, he remained in the Bayil prison for three more years in much worse conditions. He also notes that the State party had confirmed that the conditions of detention were not in accordance with the international standards at least until 24 June 2008. He further submits that the State party had confirmed that the detention regime was improved for the author only as of 10 May 2005. Under the Code of Execution of Sentences, the regime of detention may be improved after the convict had served 10 years. The author was arrested on 11 September 1989, therefore his detention regime could have been lightened as of 1 September 2000, when the Code was adopted, but that did not happen because "of the biased attitude of the prison administration".

5.4 The author further reiterates that, despite the fact that the size of the cells in Qobustan prison corresponds to the domestic standards, it does not correspond to international standards, especially taking into consideration that the prisoners remain in those cells for 23 hours a day, and refers to the recommendation by the European Committee for the Prevention of Torture, establishing a standard of 7 square metres per inmate.¹¹ The author further submits that, since he started serving his sentence, numerous high-ranking officials from the prison service, including its head had been discharged from office for "abuses of duties". He also submits that the State party's authorities have been discussing the need for a new prison for individuals serving life sentences since 2000, and the construction of such a prison started in 2007, but to date it remains unclear when the project will be finalized. He goes on to outline numerous general problems within the correctional system, such as inadequate investigations of complaints of prisoners, delays and disappearance of prisoner's correspondence, and no opportunities for work, training or sports for the inmates.

Additional information by the State party

6.1 On 14 November 2011, the State party submits that the Supreme Court has conducted a verification of the legality of and the grounds for the life imprisonment sentence against the author. The State party reiterates the content of the 12 November 1991

¹⁰ The author refers to communication No. 1633/2007, *Avadanov v. Azerbaijan*, Views adopted on 25 October 2010, para. 6.1.

¹¹ European Committee for the Prevention of Torture, Second General Report on the CPT's activities covering the period 1 January to 31 December 1991, see note 4 above, para. 43.

verdict against the author. It further submits that, on 20 September 2005, the Chamber for Criminal and Administrative Offences of the Supreme Court reviewed the author's case following his cassation appeal and rejected the appeal. That ruling was amended by the Plenum of the Supreme Court on 24 October 2005, which reviewed the case based on a presentation by the President of the Court. The Plenum amended the verdict in the sentencing part, replacing the death penalty with life imprisonment. Thereafter the author filed a request to the Qaradag District Court to amend his sentence from life imprisonment to 15 years' imprisonment. On 24 October 2005, the Qaradag District Court partially satisfied the author's request, reducing the individual sentences for some of the offences. The Court determined that the aggregated sentence for all the offences, of which the author was convicted, would be life imprisonment. On 9 December 2005, the Court of Appeal rejected the author's appeal against that judgement. On 28 March 2006, the Supreme Court rejected the author's application to restore the deadline for appealing against the above decision of the Court of Appeal.

6.2 The State party submits that the original verdict against the author was issued based on the Code of Criminal Procedure in force until 1 September 2000. Article 343 of that Code provided that cassation appeals could be filed against all verdicts, except those issued by the Supreme Court. It further submits that, based on article 4 of the Fundamental Principles of Criminal Legislation of the USSR and the Soviet Republics, individuals were tried in accordance with the criminal legislation of the Republic on the territory of which the offence was committed. Based on article 4 of the Criminal Code of the Azerbaijan Soviet Socialist Republic, adopted on 8 December 1960, which was in force at the time when the author committed offences and was convicted, all individuals that had committed offences on the territory of that Republic were prosecuted in accordance with that Code. The codes of all Republics that were part of the Soviet Union contained such provisions. Since the author had committed crimes on the territories of the Russian Soviet Federative Socialist Republic and of the Georgian Soviet Socialist Republic, he was also convicted and sentenced based on the Criminal Codes of those Republics. In the 24 October 2005 decision of the Qaradag District Court, all offences committed by the author had been qualified under the Criminal Code of the Republic of Azerbaijan that had entered into force on 1 September 2000 and his punishment was determined under the provisions of that Code.

6.3 Regarding the author's allegations that he and other defendants and their representatives had been illegally removed from the courtroom, the State party submits that the author and three other defendants had indeed been removed from the courtroom by an order of the court dated 12 July 1991 for systematic violations of the court order and insubordination to the orders of the presiding judge, based on article 280 of the Criminal Procedure Code in force at the time. The order of the court was lawful and well reasoned. The State party further maintains that the author was proposed a defence attorney (Mr. Nadzhafov), that the author accepted the attorney and that the attorney represented him throughout the proceedings and was present at the announcement of the verdict. The members of the court panel that tried the author went to the detention centre where the accused were detained and, on 12 and 13 November 1991, read out the verdict to them and informed them of their right to request a supervisory review.

6.4 Regarding the author's allegations that he and other defendants had been tortured, the State party submits that the above allegations were reviewed and could not be confirmed.

6.5 Regarding the author's allegation that there were no legal grounds for the commutation of his death sentence to life imprisonment, the State party refers to the decision as to admissibility of the First Section of the European Court of Human Rights in

the case *Humbatov v. Azerbaijan*,¹² where the Court found a similar complaint manifestly ill-founded. The State party concludes that the commutation of the sentence is legal under national and international law and that it guarantees the constitutional right to life.

Author's comments on the State party's submission

7.1 On 4 December 2012, the author submits that the charges against him in the initial verdict, punishable by death penalty, were murder and banditry. He reiterates that the initial verdict against him had been pronounced after Azerbaijan had declared independence and in violation of article 15 of the Constitutional Act, which prohibits the application of any foreign law on the territory of Azerbaijan. According to international law that does not exclude his being held accountable for the offences committed outside Azerbaijan, but the above offences should have been re-qualified under the provisions of the domestic legislation. If the legislation of the State where the offence had been committed provides a lighter punishment, that should also have been taken into consideration. At present, banditry is not punishable by death or by life imprisonment either in the Russian Federation or in Georgia.¹³ The author further partially reiterates his submission regarding the violation of his rights under article 15 of the Covenant.

7.2 The author further notes that the State party had confirmed that he and other defendants had been removed from the courtroom for a period of four months and maintains that the above violated his "procedural rights" guaranteed by the 1960 Code. He maintains that the participation in the proceedings of his defence attorney could not completely replace his own participation. The author refers to the jurisprudence of the European Court that the defendant in first instance proceedings has the right to be present at the proceeding.¹⁴

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

8.2 The Committee notes that the author's application to the European Court of Human Rights had been rejected, on 28 November 2008, by a committee of three judges as inadmissible on the basis of articles 34 and 35 of the Convention. The Committee has therefore ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the author's allegations that there were violations of his rights under article 14 (paras. 1 and 3 (d)) of the Covenant during the first instance trial and that the conditions of detention in the Bayil prison violated his rights under articles 7 and 10

¹² European Court of Human Rights (First Section), Decision as to the admissibility of applications Nos. 9852/03 and 13413/04 of 18 May 2006.

¹³ The author refers to similar cases in the Russian Federation and in Georgia, where individuals convicted of similar crimes had been sentenced to different terms of imprisonment, but not to life.

¹⁴ The author refers to *Ekbatani v. Sweden*, application No. 10563/83, judgement of 26 May 1988, para. 25; *Cooke v. Austria*, application No. 25878/94, judgement of 8 February 2000, para. 42; *Kremzow v. Austria*, application No. 12350/86, judgement of 21 September 1993; and to the Committee's jurisprudence in *Moraël v. France*, communication No. 207/1986, Views adopted on 28 July 1989, para. 9.3.

(paras. 1 and 3) of the Covenant. The Committee also notes the State party's submission that any complaints related to events that occurred prior to the entry into force of the Optional Protocol for the State party in 2002 fall outside the Committee's competence *ratione temporis*. The Committee recalls its jurisprudence, according to which alleged violations of the Covenant which occurred before the entry into force of the Optional Protocol for a given State party, may be examined by the Committee if those violations continue after that date or continue to have effects which in themselves constitute a violation of the Covenant.¹⁵ In that connection, the Committee may regard an alleged violation as continuing in nature when there exists affirmation, after the entry into force of the Optional Protocol, by act or by clear implication, of previous violations by the State party.¹⁶ Regarding the author's claims under article 14 concerning the investigation and the trial, the Committee observes that the investigation took place in 1989, and that the trial took place in 1991. Although the author's conviction was affirmed on a belated cassation appeal in 2005, the author does not allege that those claims were brought to the attention of the Supreme Court in cassation in a manner that would enable the Committee to regard the decision on cassation as an affirmation of the previous violations.¹⁷ Regarding the author's claims concerning conditions in the Bayil prison, the Committee observes that he was transferred to the Qobustan prison in 2001. For those reasons, the Committee finds that, in the circumstances, it is precluded *ratione temporis* from considering the above claims.

8.4 The Committee notes the author's claims that his rights under article 14, paragraphs 5 and 6, of the Covenant had been violated during the proceedings before the Qaradag District Court. With regard to paragraph 5, the Committee observes that the 2005 decision of the Qaradag District Court was itself an additional proceeding for review of the author's sentence, alongside the cassation appeal that took place before the Supreme Court, and did not result in the type of judgment that article 14, paragraph 5, requires to be subject to appeal. With regard to paragraph 6, the Committee observes that the author's conviction has not been reversed nor has he been pardoned. Accordingly, the Committee finds that the author has failed to substantiate the above claims for purposes of admissibility, and declares them inadmissible under article 2 of the Optional Protocol.

8.5 The Committee notes the author's claim that, when the Plenum of the Supreme Court reviewed the decision on his cassation appeal in October 2005, the court did not notify the defence of a hearing attended by the Prosecutor, thereby violating the principle of equality of arms under article 14, paragraph 1, of the Covenant. The Committee finds that the author has sufficiently substantiated this claim, for purposes of admissibility, and declares it admissible.

8.6 The Committee notes the author's claims that he has been sentenced to a heavier penalty than provided by the law in violation of article 15 of the Covenant. The Committee notes again the State party's submission that any complaints related to events that occurred prior to the entry into force of the Optional Protocol for the State party in 2002 fall outside the Committee's competence *ratione temporis*. The Committee observes that the author was initially sentenced to death, that the sentence was commuted to life imprisonment in 1998, and that life imprisonment was expressly confirmed as the legally proper sentence by the Plenum of the Supreme Court on 24 October 2005, in the course of the author's belated

¹⁵ See communications No. 1070/2002, *Kouidis v. Greece*, Views adopted on 28 March 2006, para. 6.3, and No. 851/1999, *Zhurin v. Russian Federation*, decision on admissibility of 2 November 2004, para. 6.4.

¹⁶ See communications *Kouidis v. Greece*, above, para. 6.6, and No. 1033/2001, *Singarasa v. Sri Lanka*, Views adopted on 21 July 2004, para. 6.3.

¹⁷ See communication No. 2042/2011, *Huseynov v. Azerbaijan*, decision on admissibility of 21 July 2014, para. 6.6.

cassation appeal. The Committee therefore finds that in the circumstances it is not precluded *ratione temporis* from considering the author's claims under article 15 of the Covenant.

8.7 The Committee further notes the author's claims that the conditions in the Qobustan prison, where the author was detained after the commutation of the death sentence, including after the entry into force of the Optional Protocol, are inhuman and degrading in violation of his rights under articles 7 and 10 (paras. 1 and 3) of the Covenant and notes that the State party has not challenged the admissibility of those claims. The Committee finds that the author has sufficiently substantiated those claims for the purposes of admissibility and declares them admissible.

8.8 Accordingly, the Committee declares those claims of the author under articles 7, 10 (paras. 1 and 3), 14 (para. 1) and 15 admissible and proceeds to their examination on the merits.

Consideration of the merits

9.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee takes note of the author's claims that the conditions in which he has been serving his life imprisonment sentence, including after the entry into force of the Optional Protocol for the State party, amount to torture, inhuman and degrading treatment in violation of articles 7 and 10 (paras. 1 and 3) of the Covenant. It notes that the State party has confirmed most of the allegations of the author regarding: the size of the cells, the absence of opportunities for work, education, vocational training or sports for individuals serving life sentences; number of visits and phone calls they are allowed; and their general ability to maintain contact with their families. The Committee also notes the State party's general argument that the conditions in its prisons are consistent with international standards. The Committee concludes that the author's conditions of detention, in the period from the entry into force of the Optional Protocol for the State party, until 24 June 2008, as described (see paras. 2.7 and 2.8 above) violated his right to be treated with humanity and with respect for the inherent dignity of the human person, and were therefore contrary to article 10, paragraph 1.¹⁸ In the light of that finding, the Committee will not examine separately any possible claims arising under articles 7 or 10 (para. 3) in that regard.¹⁹

9.3 The Committee notes the author's claim that, after his cassation appeal was rejected on 20 September 2005 by a panel of judges of the Supreme Court, the Plenum of the Supreme Court further reviewed that decision on 24 October 2005, leading to a modification of the author's sentence; the Plenum held a hearing in the presence of the Procurator, but did not notify the defence, and neither the author nor his counsel attended the hearing. The State party does not contest those allegations. The Committee recalls that under the principle of equality of arms, the same procedural rights are to be afforded to both parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.²⁰ In the

¹⁸ See communications No. 1813/2007, *Akwanga v. Cameroon*, Views adopted on 22 March 2011, para. 7.3, and No. 1628/2007, *Pavlyuchenkov v. Russian Federation*, Views adopted 20 July 2012, para. 9.2.

¹⁹ See for example communication 1406/2005, *Weerawansa v. Sri Lanka*, Views adopted on 17 March 2009, para. 7.4.

²⁰ General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 13.

absence of any explanation by the State party for the unequal access of the prosecution and the defence to the hearing, the Committee concludes that the State party infringed the principle of equality of arms on this occasion, in violation of the author's right under article 14, paragraph 1, of the Covenant.

9.4 The Committee takes note of the author's claim that the commutation of his death sentence into life imprisonment for a crime committed at a time when life imprisonment was not provided by law violated article 15, paragraph 1, of the Covenant. According to article 15, paragraph 1, last sentence, of the Covenant, if, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. In the present case, the Committee notes that the penalty of life imprisonment established by the Law of 10 February 1998 superseded the death penalty, a penalty which is more severe than life imprisonment. Furthermore, for some of the offences of which the author was convicted, such as murder, there were no subsequent provisions made by law for the imposition of any lighter penalty from which the author could benefit, other than the above-mentioned amendment on life imprisonment. In such circumstances, the Committee cannot conclude that the State party, by substituting life imprisonment for capital punishment for the crimes of which the author was convicted, has violated the author's rights under article 15, paragraph 1, of the Covenant.²¹

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations of Mr. Quliyev's rights under articles 10 (para. 1) and article 14 (para. 1) of the Covenant.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Quliyev with an effective remedy, including adequate compensation. The State party is also under an obligation to avoid similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views, and to have them translated into the official language of the State party and widely distributed.

²¹ See communications No. 1425/2005, *Marz v. Russian Federation*, Views adopted on 21 October 2009, paras. 6.5 and 6.6, and No. 1346/2005, *Tofanyuk v. Ukraine*, Views adopted on 20 October 2010, para. 11.3.