



## 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 of the Fiery Hearts Club, an international human rights association)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Uzbekistan
<i>Date of communication:</i>	14 July 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, 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 matters:</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 issues:</i>	Exhaustion of domestic remedies; substantiation of claims; evaluation of facts and evidence

\* 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 communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez Rescia, Fabián Omar Salvio, Dheerujlall Seetulsingh, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

An individual opinion signed by Committee member Olivier de Frouville is annexed to the present Views.



<i>Substantive issues:</i>	Torture; torture — prompt and impartial investigation; arbitrary arrest — detention; effective remedy; fair trial; fair trial — legal assistance; fair trial — right to be tried in one’s presence
<i>Articles of the Covenant:</i>	2, 7, 9, 10 and 14
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Kayum Ortikov, a 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 Covenant. Although not specifically invoked by the author, the communication appears 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 Fiery Hearts Club, an international human rights association.

#### **The facts as submitted by the author**

2.1 The author is an army officer in the reserves. From 2004 to 2008 he worked as a security guard in Tashkent at the embassy of the United Kingdom of Great Britain and Northern Ireland. 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 did not profit from the deal and acted on the request of the men. After working for three months in the Russian Federation, the men returned to Uzbekistan, having not been paid for the last two months. Seven of the men submitted complaints against the author to the Kashkadaryinsky 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 to each of the seven claimants; the claimants subsequently withdrew their complaints.

2.2 At the end of September 2008, the author was summoned to the Kashkadaryinsky regional police office to provide explanations regarding the complaints submitted and their subsequent withdrawal. On 25 December 2008, the author was summoned to the Chilanzar district police office, where he was charged with trafficking in persons. The author refused to sign the respective documents in the absence of his lawyer, and instead wrote that he did not agree with the charges. The author was then placed, without the completion of any procedural documentation, in a cell in the basement of the police building. On 26 December 2008, the author’s brother unsuccessfully sought the author’s release on bail. The next day, the author was visited by his lawyer, Mr. Allanazarov. On 29 December 2008, the author was brought to the Chilanzar District Court, where his detention was approved. 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. Subsequent requests of the author to see his lawyer were ignored; they met with each other only on 15 January 2009, the first day of the trial.

2.3 On 29 January 2009, the Chilanzar District Court found the author guilty of trafficking of persons under article 135 (2) (b), (e), (f), (h) and (i) of the Criminal Code and sentenced him to 6 years in prison. During the hearing, the alleged victims testified that they had withdrawn their complaints and had no claims against the author since 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 restated 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 held in the basement for the duration of the proceedings.

2.5 From 8 February to 7 September 2009, the author was held in pretrial detention facility No. 64/1 of the city police department in Tashkent, in violation of 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. He claims that up to the beginning of August 2009 he was subjected to severe forms of torture by the officers from the National Security Service and the police, as well as by detainees acting on instructions from the officers. The author was beaten with fists and an iron bar; was kicked in the abdomen, chest and legs; was stripped naked; was hung by his ankles (the "helicopter position"); suffered burns from fire applied to his genitals and other parts of his body; and was subjected to electroshock applied to his genitalia and lips as well as needles inserted under his fingernails, among other types of abuse. 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 noose was put around his neck, with the other end of the rope tied to his genitals from behind, 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 10 days, with his arms, legs, abdomen and neck tied to the bed. He was put in a cell with prisoners infected with tuberculosis and HIV/AIDS. Furthermore, he was subjected to psychological pressure and 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 chest and hematomas on his head and fingers and lost 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 his head, from the crown to his forehead, with a razor. According to the author, the purpose of the torture was to make 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 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 learned that he had been subjected to torture. On 24 and 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-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 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. On 7 September 2009, the author was transferred to prison No. 64/29 in Navoi. The author's wife was able to visit him for the first time on 8 October 2009. According to her, he was extremely thin, his body was covered with scars and he had lost his will to live.

2.8 On 2 February 2010, the author was reprimanded for violating the prison schedule. On 5 April 2010, after a visit by the International Committee of the Red Cross to the prison, the prison officers questioned the author about information he had transmitted to the organization. They beat the author on the soles of his feet with a rubber stick, reprimanded him for violating the prison schedule and locked him in solitary confinement for five days. 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 the author's ill-treatment, the 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 punishment, the Tashkent City police department, the National Security Service, the Supreme Court, the Ombudsman, the Cabinet of Ministers, the Ministry of Justice and the parliament, among others. The replies the family 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 had acted in accordance with the law, had correctly established the relevant facts and qualified the offence, and had imposed an adequate penalty. The Tashkent City Court and the Supreme Court dismissed her claims on the same grounds on 10 and 28 December 2009, respectively.

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 and applied for refugee status. From 2 to 23 October 2012, the author was treated in a public hospital in Kyiv, diagnosed with post-traumatic stress disorder, chronic prostatitis and varicose veins travelling in the right spermatic cord. The author was treated in the same hospital from 27 August to 6 September 2013 due to the worsening of his mental condition (stress disorder with psychotic symptoms, together with cerebral dysfunction).

### **The complaint**

3.1 The author alleges that he was subjected to torture while held in pretrial 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 pretrial detention facility No. 64/1 without a proper arrest order, by holding him in incommunicado detention from 8 February to 4 May 2009 in detention facility No. 64/1 and by keeping him in the pretrial detention facility for months instead of transferring him to prison within 10 days after the final court verdict was received by the administration of the pretrial detention facility, in violation of national legislation.

3.3. The Committee considers that the author's claim that it was impossible for his family and lawyer to visit him in the pretrial 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 had withdrawn 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) and (i) of the Criminal Code. 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 that 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 or seized or destroyed the identity documents of the victims (art. 135 (2) (i)).

#### **State party's observations on admissibility**

4. In a note verbale dated 30 December 2013, the State party submitted its observations, arguing that the communication was inadmissible. According to the State party, the author has not raised the issues under articles 7, 9 and 14 of the Covenant at the domestic level, nor has he appealed his sentence to the Supreme Court. The State party further submits 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 is unsubstantiated for the purpose of admissibility and all of the author's arguments refer to the evaluation of facts and evidence and interpretation of national legislation. The author provided no reasons as to why the 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 is asking 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 states that the author's claims are incompatible with the provisions of the Covenant and that, in the light of the above observations, the communication should be considered inadmissible.

#### **Author's comments on the State party's observations**

5. In a letter dated 3 March 2014, the author commented on the observations of the State party. He submits that he was kept in incommunicado detention and did not have access to a 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 opportunity to submit a complaint to the State authorities. However, his family lodged a complaint as soon as they found out about the torture he had experienced. The author claims that the State party has an obligation to carry out an effective investigation into allegations of torture even if the alleged victim has not filed an official complaint.<sup>1</sup>

#### **State party's additional observations**

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

6.2 The State party describes the facts of the author's criminal case and states that the author's conviction was based on the complaints submitted by the victims and that his guilt was established during the investigation on the basis of testimonies from victims and witnesses, confrontation records and other objective evidence, and that his actions under article 135 (2) (b), (e), (f), (h) and (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 clarifies that on 25 December 2008, the author was informed that he was suspected of having committed a criminal offence under articles 168 (2) (fraud) and 153 (3) (trafficking in persons) of the Criminal Code. On 26 December 2008,

<sup>1</sup> The author refers to Committee against Torture communications No. 6/1990, *Unai Parot v. Spain*, Views adopted on 2 May 1995, para. 10.4; and No. 59/1996, *Blanco Abad v. Spain*, Views adopted on 14 May 1998, para. 8.6.

he was arrested on the basis of a decree issued by a senior investigator in the Chilanzar district police office in Tashkent. The author was given the relevant document to read and he signed it. 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) and (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 the absence of his chosen lawyer. The State party submitted that the author's detention in the pretrial detention facility of the police during the period described in the submission was in accordance with the law.

6.4 The State party stated that following the submission on 8 May 2009 of a complaint by the author's brother concerning torture of the author in detention, the chief directorate for the enforcement of punishment carried out an investigation but did not find any proof of the allegations of ill-treatment.

6.5 Addressing the author's allegation that the administration of the detention facility refused 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 refers to the law on detention during criminal proceedings, according to which the authorization to visit a person in pretrial detention can be granted by the officer or institution in charge of the respective criminal investigation. 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 replies that the author underwent a medical examination in the detention facility and has not requested medical assistance while in detention. When the author was transferred to prison No. 64/29, a surgeon, a general practitioner, a psychiatrist and a dentist examined him. No scars or burns were detected on his body. Medical examinations carried out on 25 February and 25 May 2010 did not reveal any deterioration in the author's health.<sup>2</sup>

6.7 The State party clarifies that the author was reprimanded on 11 February 2010 for repeated breaches of the prison rules, such as failure to maintain his working space in order, his reluctance to keep his clothes clean and to wear a uniform, as well as repetitive quarrels with the officers on these matters. Since the author continued to breach the rules, despite the reprimand, on 15 April 2010, he was placed in solitary confinement for five days. The State party also submits that, contrary to what the author claimed, on 10 April 2010, representatives of the regional delegation of the International Committee of the Red Cross did not visit prison No. 64/29 and that the author was not subjected to any unlawful treatment on that or any other date.

6.8 On the basis of the above information, the State party submits 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 on 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 punishment, which had not revealed any signs of ill-treatment of the author in detention, the author states 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 that led to his conviction.

7.2 The author reiterates his previous statement that it was impossible to access remedies, owing to his incommunicado detention. Commenting on the State party's

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<sup>2</sup> The State party has not provided any supporting documents concerning this statement. It has not provided any documents in support of any of the three submissions.

observation that the medical doctors who examined him upon his transfer to prison No. 64/29 did not find any signs of torture on his body, the author submits that, in accordance with the Committee's recommendations, the State party should provide independent medical examinations following allegations of torture.<sup>3</sup>

7.3 The author further states that from 25 to 29 December 2008 he was held in police detention without the proper procedural documents authorizing his arrest having been completed. In response to the State party's argument that his detention in pretrial detention facility No. 64/1 was lawful, the author submits that, in accordance with article 54 of the criminal implementation code, a convicted person must be transferred to the prison by no later than 10 days after the final court sentence is received by the pretrial detention facility. The author was kept in a pretrial 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 the criminal proceedings. On 25 December 2008, the author was informed that he was suspected of having committed a criminal offence; 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 issued by a senior investigator; he and the lawyer signed the document, stating that they were familiar with the content of the decree. The author's detention was authorized by a court, in the presence of a lawyer, on 27 December 2008.

8.2 The lawyer hired by the author appealed the decision of the first instance court on 9 February 2009. However on 27 February 2009, the date scheduled for the appeal hearing, the lawyer withdrew the appeal. For that reason the author did not participate in the subsequent court hearings initiated by the victims.

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

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

8.5 The State party reiterates 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.

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<sup>3</sup> The author refers to, among other sources, CCPR/C/HUN/CO/5, para. 14; and communication No. 595/2000, *Saimijon and Bazarov v. Uzbekistan*, Views adopted on 14 July 2006, para. 8.3.

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 at the Chilanzar district police office. It also notes the author's complaint under article 14 of the Covenant concerning the lack of access to a lawyer of his choice before the trial. The Committee further notes the State party's general observation that the author did not raise 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 that the author failed to raise before the national courts the claims relating to the initial period of detention and access to a lawyer of his choice. 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 notes the author's claims concerning a violation of his right to fair trial under article 14 of the Covenant in relation to his conviction under article 135 (2) (b), (e), (f), (h) and (i) of the Criminal Code. It also notes the corresponding argument of the State party that the author appealed the trial court judgment to the Supreme Court, but withdrew the appeal before the latter Court had taken a decision. 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 complaint is also inadmissible under article 5 (2) (b) of the Optional Protocol.

9.5 The Committee notes the author's claim concerning his treatment in pretrial 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 pretrial 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, to no avail. The Committee also notes the author's allegation that he himself could not complain of the ill-treatment while in detention owing 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, and the remaining claims under articles 9 and 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 Committee has considered the 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's pretrial 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 punishment 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 further notes, however, that the State party has not provided specific details on the investigation carried out by the chief directorate for the enforcement of punishment. 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 that 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 the period of incommunicado detention has not been prescribed by a legal authority and is, in effect, indefinite.<sup>4</sup> It further notes that the author's family has submitted at least 12 complaints (attached to the original submission) about author's 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 the authorities in connection with the 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 pretrial detention facility No. 64/1, as well as the failure of the State party to refute those allegations with proper documentary evidence, and considering the specific context of the author's prolonged detention in the pretrial facility, contrary to the requirements of domestic law, which has not been explained by the State party,<sup>5</sup> and the State party's failure 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.

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 pretrial detention facility from 8 February 2009 to 7 September 2009, while under article 54 of the criminal implementation code of Uzbekistan a convicted person must be transferred from a pretrial 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 pretrial facility No. 64/1 was not in accordance with the 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 pretrial detention facility No. 64/1 from 8 February 2009, and also notes 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 had refused to receive visits from 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 the State party did not claim that the author refused to receive visits from 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

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<sup>4</sup> See communications No. 992/2001, *Bousroual v. Algeria*, Views adopted on 30 March 2006, para. 9.8, and No. 2297/2013, *Chani v. Algeria*, Views adopted on 11 March 2016, para. 7.3.

<sup>5</sup> See the committee's general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 11.

liberty and that they must be treated with humanity and respect for their dignity.<sup>6</sup> It also observes that incommunicado detention is inconsistent with the obligation to treat detainees humanely and with respect for their dignity.<sup>7</sup> In the 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 Committee, acting under article 5 (4) of the Optional Protocol, 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 (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 and punish those responsible for the torture of the author; and (c) provide compensation to the author for the violations suffered. The State party is also under an obligation to take all steps necessary to prevent 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 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 when it has been determined that a violation has occurred, 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 present Views and to have them widely disseminated in the State party.

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<sup>6</sup> See general comment No. 21 (1992) on humane treatment of persons deprived of their liberty, paras. 3-4, and communications No. 1780/2008, *Zarzi v. Algeria*, Views adopted on 22 March 2011, para. 7.8, and No. 1753/2008, *Guezout and Rakik v. Algeria*, Views adopted on 19 July 2012, para. 8.8.

<sup>7</sup> See communication No. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 8.8.

## Annex

[Original: French]

### **Individual opinion by 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 the 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 they are 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 the Chilanar District Court. The Committee rightly observes that such incommunicado detention of itself violates 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.<sup>a</sup> 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.<sup>b</sup>

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<sup>a</sup> See general comment No. 35 (2014) on article 9 (liberty and security of person), para. 35. See also, inter alia, communication No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 9.5; communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.7; and communication No. 2297/2013, *Chani v. Algeria*, Views adopted on 11 March 2016, para. 7.5.

<sup>b</sup> 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*.