



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. 2356/2014*, **, ***

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| <i>Communication submitted by:</i> | Ilkhom Ismanov and Zarina Nazhmutdinova (represented by counsel, Tatyana Khatyukhina) |
| <i>Alleged victims:</i> | The authors |
| <i>State party:</i> | Tajikistan |
| <i>Date of communication:</i> | 5 November 2012 (initial submission) |
| <i>Document references:</i> | Decision taken pursuant to rule 97 of the Committee's rules of procedure (now rule 92), transmitted to the State party on 17 March 2014 (not issued in document form) |
| <i>Date of adoption of Views:</i> | 5 July 2019 |
| <i>Subject matter:</i> | Unlawful detention; torture; mistreatment; unfair trial |
| <i>Procedural issues:</i> | None |
| <i>Substantive issues:</i> | Arbitrary arrest and detention; incommunicado detention; fair trial; fair trial – legal assistance; fair trial – adequate time and facilities; torture; prompt and impartial investigation; conditions of detention; access to court |
| <i>Articles of the Covenant:</i> | 7, read alone and in conjunction with 2 (3), 9 (1)–(4), 10 (1) and 14 (1) and (3) (b) and (g) |
| <i>Articles of the Optional Protocol:</i> | None |

1. The authors of the communication are Ilkhom Ismanov and Zarina Nazhmutdinova, both nationals of Tajikistan born in 1978 and 1982, respectively. The authors are married. They claim that the State party violated Mr. Ismanov's rights under article 7, read alone and

* Adopted by the Committee at its 126th session (1–26 July 2019).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

*** An individual opinion by Committee member Vasilka Sancin (partly dissenting) is annexed to the present Views.



in conjunction with articles 2 (3), 9 (1)–(4), 10 (1) and 14 (1) and (3) (b) and (g), of the Covenant, and Ms. Nazhmutdinova's rights under article 7. The Optional Protocol entered into force for the State party on 4 April 1999. The authors are represented by counsel.

The facts as submitted by the authors

2.1 On 3 September 2010, a car laden with explosives entered the courtyard of the Sughd Regional Department for Combating Organized Crime of the Ministry of Internal Affairs and exploded, killing the driver, considered to be a suicide bomber, and three employees of the department. Some 26 other employees were injured, along with 5 bystanders.

2.2 That same day, the Sughd Regional Prosecutor's Office initiated a criminal investigation and forwarded the case to the investigation division of the Sughd Regional Department of the State Committee for National Security. An investigation was carried out for about nine months. As a result, 53 persons were indicted, including Mr. Ismanov. On 23 December 2011, the defendants were found guilty and sentenced to various prison terms, from five years' to life imprisonment. Mr. Ismanov himself was sentenced to eight years in prison.

2.3 The authors claim that Mr. Ismanov was abducted by unknown persons from his house on 3 November 2010. At the time of his initial arrest, he was not informed about any charges against him. Between 3 and 12 November 2010, he was transferred several times to various detention facilities. Neither his family nor his lawyer were informed of his whereabouts. Ms. Nazhmutdinova claims that she thought that her husband would be killed and that she would never see him again. She was not able to explain to her children what had happened to their father. She was also told by her husband's lawyer not to wear her religious attire that she normally wore, since that would "make his situation even worse". As a result, Ms. Nazhmutdinova suffered from suicidal thoughts and experienced severe stress and shock.

2.4 On 12 November 2010, after 10 days in detention, Mr. Ismanov was finally brought before a judge. His lawyer asked him to tell the judge about his mistreatment and torture at the hands of the law enforcement officials. Mr. Ismanov showed the court the signs of electrocution on his arms. He also stated that boiling water had been dumped on his head. He showed the signs of beatings on his legs, which meant that he could barely walk, but the judge told him to stop and refused to listen to him. Mr. Ismanov was also planning to tell the judge that he had been left outside in the cold wearing only his underwear and that his genitalia had started bleeding and that his head had been squeezed until he had lost consciousness, but the court did not listen or consider his signs of torture. His lawyer filed a motion to request a medical examination, which was denied by the judge, who advised instead to petition the investigator to have such an examination conducted.

2.5 The lawyer also filed a complaint regarding Mr. Ismanov's conditions of detention and mistreatment, which was rejected by the Sughd Regional Criminal Court on 29 November 2010. In total, Mr. Ismanov was kept in pretrial detention for nine months, during which time he was held in conditions contrary to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

2.6 Mr. Ismanov also claims that, during these nine months, he was denied adequate time to meet with his lawyers. For example, on 8 January 2011, the court decided to extend his detention until 1 April 2011. His lawyer was present, but was prevented from communicating with him. When Mr. Ismanov was asked by his lawyer whether he had been tortured, the prosecutor interrupted them. During the next pretrial detention hearing, which was held on 25 March 2011, Mr. Ismanov was present, but not his lawyer. In addition, during these hearings, the court failed to examine the lawfulness of the detention itself.

2.7 As a result of the torture and mistreatment that he suffered, Mr. Ismanov's health deteriorated significantly. On a number of occasions, he was denied proper health care. Before his arrest, Mr. Ismanov was a healthy person. During his detention, he suffered from lung infections, bruises, pneumonia, bronchial asthma and other conditions. He never received adequate medical care and the only medications he received were provided by his family.

2.8 Mr. Ismanov was also denied the time to meet with his family on a number of occasions, in addition to the periods of time during which the authorities ignored his family's requests regarding his whereabouts. For example, Ms. Nazhmutdinova saw him on 20 November 2010, but only for two minutes, in the presence of police officers. On 19 February 2011, she was able to meet with him in private. During this meeting, Mr. Ismanov provided additional details of torture. He told her that he had been electrocuted, including to his genitalia, that hot and cold water had been dumped over his head, that he had been beaten on his legs and the soles of his feet, that he had been left outside in the cold and that he had been threatened with being shot in the head.

2.9 The authors contend that Mr. Ismanov's lawyer filed several petitions during the court hearings. At the beginning of the trial, the hearings were open¹ but, on 9 August 2011, the prosecutor requested that the court close the hearings in the "interests of the security and safety of the participants in the process, including witnesses". The authors claim that this was done to prevent the public from learning about the facts of the torture suffered by the defendants.

2.10 Other defendants, along with Mr. Ismanov, openly stated that they had been tortured, but the court disregarded their statements. Mr. Ismanov stated that, between 3 and 10 November 2010, he had been tortured by a police officer, A.S. The court questioned this officer, who stated that, during the time in question, he had been on leave. The court requested official proof that he had been on leave, and then never completed its consideration of the issue. The exchange and questioning were not reflected in the trial transcript.

2.11 During the cassation appeal, the court did not allow international organizations and human rights defenders to observe the hearings. Again, the lawyers filed numerous petitions to document the instances of torture and to prove their clients were forced to confess his guilt. The court rejected these petitions. Mr. Ismanov also complained about unlawful detention upon initial arrest, and claimed that during such detention, he had been tortured. However, these claims were dismissed. On 2 November 2012, the Supreme Court rejected Mr. Ismanov's cassation appeal. The authors therefore contend that they have exhausted all available domestic remedies.

The complaint

3.1 The authors claim that Mr. Ismanov was subjected to torture and mistreatment, in violation of his rights under articles 7 and 10 (1) of the Covenant. They claim that he was also denied proper health care and held incommunicado from 3 to 5 November 2010, 6 to 12 November 2010 and 12 to 19 November 2010, in violation of his rights under article 7 of the Covenant.²

3.2 The authors claim that, although Mr. Ismanov was detained on 3 November 2010, his detention was not registered until 10 November 2010 and he was only brought before a judge on 12 November 2010. Also, he was not, at the time of his arrest, informed of the charges against him. The authors also contend that the court never considered the question of whether his detention continued to be lawful, despite complaints about torture and the conditions of detention. All these factors, according to the authors, amount to a violation of Mr. Ismanov's rights under article 9 (1)–(4) of the Covenant.

3.3 Mr. Ismanov contends that the conditions of his pretrial detention, including lack of proper medical care, amounted to a violation of article 10 (1) of the Covenant. The authors also claim that Mr. Ismanov's rights under article 14 (1) of the Covenant have been violated by holding closed trial hearings. The court was not an independent tribunal and it rejected numerous petitions and requests from lawyers. It also ignored many claims regarding torture and mistreatment.

¹ The authors submit that, while the court hearings were initially "public", the court limited the number of relatives for all defendants to 25, and did not allow the presence of either international organizations or the mass media.

² Mr. Ismanov refers to the Committee's jurisprudence in *McCallum v. South Africa* (CCPR/C/100/D/1818/2008).

3.4 In addition, Mr. Ismanov was not able to communicate freely with the lawyer of his choice, in violation of his rights under article 14 (3) (b) of the Covenant.

3.5 The authors also claim that Mr. Ismanov was tortured with the aim of forcing him to confess his guilt, in violation of his rights under article 14 (3) (g) of the Covenant.³ His lawyer invited the court to disregard his forced confessions, but to no avail.

3.6 The authors further claim that Mr. Ismanov's rights under article 7, read alone and in conjunction with article 2 (3), of the Covenant were violated as his complaints about torture and mistreatment were either rejected or ignored. They also claim therefore that the State party has failed to effectively investigate their claims of torture and ill-treatment and to provide a remedy.

3.7 Ms. Nazhmutdinova claims that she was told that her husband had been taken away with a bag on his head, and that she was not able to ascertain his whereabouts for several days, which caused her severe shock and distress. She was afraid that she would never see him alive again. She also suffered from suicidal thoughts. She therefore believes that the treatment she experienced at the hands of the authorities amounts to a violation of her rights under article 7 of the Covenant.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 14 May 2014,⁴ the State party submits that on 3 September 2010 a suicide bomber, K.A., drove a vehicle into the Sughd Regional Department, where the car exploded killing several officers and partly destroying the building. On the same date, the Sughd Regional Prosecutor initiated a criminal investigation, which was led by a group of investigators from several law enforcement agencies.

4.2 The findings of the investigation are indisputable: the crime was committed by members of the Islamic Movement of Uzbekistan, a terrorist organization, which, in 2011, started to call itself the Turkistan Islamic Party. This group was recognized as a terrorist organization by a decision of the Supreme Court on 30 March 2006. The activities of this organization are prohibited in other countries, such as the Russian Federation, several European countries and the United States of America. The suicide bomber himself, K.A., was subject to an arrest warrant in Tajikistan before the bombing, on charges of multiple kidnappings.

4.3 As part of the investigation that was initiated against K.A., police officers detained Mr. Ismanov. On 3 November 2010, he was brought to the Sughd Regional Department. The investigation established that K.A. was an active member of the Turkistan Islamic Party. On 10 November 2010, Mr. Ismanov was charged with being a member of a criminal group or criminal organization under article 187 (2) of the Criminal Code. Previously, Mr. Ismanov had already been convicted and sentenced to five years' imprisonment for hooliganism and resisting a police officer but had been released due to an amnesty after serving four months of his sentence.

4.4 On 13 November 2010,⁵ the Khujand City Court approved Mr. Ismanov's pretrial detention. During the investigation, Mr. Ismanov confessed partial guilt. The investigation was completed and the criminal case was brought to court on 1 June 2011. By a judgment of the Sughd Regional Court dated 23 December 2011, Mr. Ismanov was found guilty under article 187 (2) (being a member of a criminal organization) of the Criminal Code and sentenced to eight years' imprisonment.

4.5 In their cassation appeal, Mr. Ismanov and other co-defendants complained that they had been tortured by police officers during the pretrial investigation. When asked why they had not complained to the "competent authorities" about torture, they claimed that they wanted to bring up these issues during the trial. On 17 August 2012, the Supreme Court

³ Mr. Ismanov refers to the Committee's jurisprudence, including in *Marinich v. Belarus* (CCPR/C/99/D/1502/2006).

⁴ The State party submitted additional observations dated 16 September 2014, but they contained no new information.

⁵ Mr. Ismanov alleges that the correct date is 12 November 2010.

instructed the General Prosecutor to verify whether Mr. Ismanov and other defendants had indeed been tortured during the investigation. An examination by the General Prosecutor's Office revealed that Mr. Ismanov had been brought to the police station on 3 November 2010, although he had, however, been officially registered on 10 November 2010, seven days after the initial arrest. His arrest was formalized only after it was ascertained that he was a member of a terrorist organization, and official charges were brought against him. As a result of this violation of procedural requirements, the chief of Sughd Regional Police, N.A., and another senior officer, K.Z., were subjected to disciplinary measures.⁶

4.6 Regarding the complaints about adequate time to meet with his lawyer, Mr. Ismanov was able to hold confidential meetings with his appointed lawyer without any limitation on the duration or number thereof. During Mr. Ismanov's detention in pretrial detention centre No. 2 in Khujand, Mr. Ismanov had several "short-term" visits with relatives. On 12, 19 and 27 November 2010, Mr. Ismanov was examined by medical personnel and those examinations revealed no signs of physical injury to his body. During those examinations, Mr. Ismanov stated that he had not been tortured or otherwise mistreated during his pretrial detention.

4.7 Initially, Mr. Ismanov claimed to be a citizen of the Russian Federation and, therefore, was allowed to meet with the consul general of that country on 20 November 2010, at which point he did not complain to the consul about torture or mistreatment. On 29 November 2010, after an investigation, the consul informed the authorities that the documents presented by Mr. Ismanov to prove his Russian citizenship were not authentic.

4.8 As a result of a thorough examination,⁷ the General Prosecutor's Office was not able to find any proof that Mr. Ismanov and his co-defendants had been tortured or otherwise mistreated. Therefore, on 20 September 2012, it was decided not to initiate a full criminal investigation due to lack of evidence to suggest that a crime had been committed. This decision was forwarded to the Supreme Court, which, on 2 November 2012, rejected Mr. Ismanov's cassation appeal.

4.9 Mr. Ismanov's sentence was reduced from eight years to six years and six months, in accordance with article 63 of the Criminal Code. Furthermore, in accordance with the provisions of the law on amnesty, Mr. Ismanov's sentence was reduced by another two years. According to the preliminary recommendations of the Working Group on Arbitrary Detention, the State party was asked to release Mr. Ismanov earlier. In order to formalize such a move, Mr. Ismanov was asked to request a pardon from the President of Tajikistan, which he refused to do.

Authors' comments on the State party's observations on admissibility

5.1 Commenting on the State party's observations,⁸ the authors reiterate their initial claims regarding the violations against them. For example, the State party admits that Mr. Ismanov was unlawfully detained between 3 and 10 November 2010. The State party informs the Committee that the two officers responsible for his unlawful detention were subjected to "disciplinary measures", despite the fact that these actions fall under article 358 of the Criminal Code ("unlawful arrest and detention"). However, the State party did not initiate a criminal investigation and there were no convictions as a result.

5.2 The State party further submits that Mr. Ismanov complained about torture during the trial. Mr. Ismanov claims that the complaints of torture were filed on his behalf by Ms. Nazhmudinova, on 4 November 2010, almost immediately after the initial arrest. A more formal complaint was filed on 10 November 2010. On 11 November 2010, Mr. Ismanov received a response from the Office of the Human Rights Ombudsman. On 12 November 2010, during the pretrial detention hearing, Mr. Ismanov himself made a complaint to the court regarding torture. During the trial, as well, Mr. Ismanov complained about torture, in July 2011.

⁶ The State party provides no further information or details regarding these disciplinary measures.

⁷ No further details are provided.

⁸ On 23 January 2015, Mr. Ismanov reiterated his previous claims, without providing any new information.

5.3 The State party submits that it found no proof of torture or mistreatment, without providing any details of the inquiry that they carried out. The authors refer to the jurisprudence of the Committee, according to which the burden of proof regarding torture cannot lay only on the author, especially in the light of the fact that the State party has better access to the relevant information. The State party is obliged to carry out an effective investigation once a claim of torture has been made. The State party claims that Mr. Ismanov had unhindered access to his lawyer without any limitations but provides no details of when such meetings were held.

5.4 On approximately 20 November 2013, Mr. Ismanov was asked to request a pardon. However, in that request, he was asked to confess his guilt. Mr. Ismanov informed the prison authorities that he would instead write about all the violations that had occurred since his arrest. The prison authorities tried to convince him, but Mr. Ismanov refused, claiming that he was innocent. As a result, the prison authorities threatened to send him to a so-called covered prison, which was famous for its harsh conditions of imprisonment. On 18 February 2014, Mr. Ismanov was placed in a confinement cell as punishment for making a telephone call. There, he started choking since there was not enough air, and the prison administration had to call for medical assistance. On 10 March 2014, Mr. Ismanov was transferred to a cold barrack, in which there was no heating. On 25 March 2014, his wife was informed that he would not be granted any family visits. On 6 May 2014, Mr. Ismanov informed his wife that the prison authorities kept pressuring him and threatening to transfer him to another prison with harsher conditions.⁹

5.5 The authors claim that the State party should be found guilty of all the violations stated in the initial complaint of Mr. Ismanov. It should be requested to carry out a prompt and effective investigation into the authors' claims, to identify the perpetrators and to hold them accountable for the violations that occurred. The criminal case against Mr. Ismanov should be reconsidered and he must be provided with adequate compensation. The State party should also be requested to create an "independent mechanism" to investigate complaints of torture.¹⁰

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must, in accordance with rule 97 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol.

6.2 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.

6.3 The Committee takes note of the claim that the authors have exhausted all available effective domestic remedies. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee considers that the authors have sufficiently substantiated their claims under article 7, read alone and in conjunction with articles 2 (3), 9 (1)–(4), 10 (1) and 14 (1) and (3) (b) and (g), for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

⁹ The authors informed the Committee that Mr. Ismanov was released in May 2015, upon completion of his sentence.

¹⁰ Mr. Ismanov also asked the Committee, among other things, to request the State party to detain persons before trial only as an exceptional measure, and cease considering the gravity of the charges as one of the criteria for granting or refusing bail. The courts must ascertain whether there is sufficient evidence to place a person in detention. Such evidence should be regularly examined by the courts when deciding on whether to grant an extension to pretrial detention.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee will first consider the authors' claims that Mr. Ismanov, upon initial arrest and detention, was tortured and otherwise mistreated, in order to force him to confess his guilt. The authors provide a detailed description of the treatment that Mr. Ismanov suffered at the hands of the police officers: he was severely beaten, hot and cold water was poured over his head, and electrocution was used as a form of torture (paras. 2.4 and 2.8). The Committee notes that, starting on 4 November 2010, and on a number of occasions thereafter, Ms. Nazhmutdinova and the lawyer of Mr. Ismanov filed numerous complaints regarding torture and mistreatment (para. 2.9). These claims were also made during the court hearings, both at first instance and on appeal (para. 2.11). The Committee also notes that Ms. Nazhmutdinova filed a complaint with the Office of the Human Rights Ombudsman (para. 5.2). The State party makes no reference to allegations of torture by Mr. Ismanov during the first instance trial, only during his cassation appeal (para. 4.5), acknowledging that he complained then that he had been tortured previously. Nevertheless, the State party claims that, on 12, 19 and 27 November 2010, Mr. Ismanov was examined by medical personnel and these examinations revealed no signs of physical injury to his body. The State party also claims that, during these examinations, Mr. Ismanov stated that he had not been tortured or otherwise mistreated during his pretrial detention (para. 4.6). However, the State party does not produce any medical records to support these conclusions and does not give any details about the "thorough examination" by the General Prosecutor's Office of the allegations of Mr. Ismanov regarding torture (para. 4.8). The Committee considers that, in the circumstances of the present case, and in particular in the light of the State party's lack of detailed response on this issue, due weight should be given to the authors' allegations.

7.3 Regarding the State party's obligation to properly investigate Mr. Ismanov's claims of torture, the Committee recalls its jurisprudence according to which criminal investigation and, where appropriate, consequential prosecution are necessary remedies for violations of article 7 of the Covenant.¹¹ The Committee notes that the material on file does not allow it to conclude that the investigation into the allegations of torture was carried out promptly or effectively or that any suspects were identified, despite a number of complaints from the authors, which even specifically identified a police officer as the alleged perpetrator of torture (para. 2.10). In the present case, the inquiry that was apparently conducted in 2012 yielded no results and did not lead to a full criminal investigation being initiated (paras. 4.5 and 4.8). Moreover, the State party failed to provide any information about this inquiry – who was interviewed, what were the findings, whether any medical examinations were ordered, whether the police officer who allegedly tortured Mr. Ismanov was indeed on leave between 3 and 10 November 2010 (para. 2.10) and so on. The Committee also notes that the State party did not interview Mr. Ismanov himself or his wife on the matter. In the circumstances of the present case, the Committee concludes that the facts before it disclose a violation of Mr. Ismanov's rights under article 7 of the Covenant, read separately and in conjunction with article 2 (3).

7.4 Having concluded that, in the present case, there has been a violation of article 7, read alone and in conjunction with article 2 (3), the Committee decides not to examine separately the authors' claims under articles 7 (as they relate to the conditions of detention of Mr. Ismanov), 10 (1) and 14 (3) (g).

7.5 The Committee will next consider the authors' claims that, between 3 and 10 November 2010, Mr. Ismanov was held unlawfully, that the State party failed to inform him of the reasons for his arrest, and that he was brought before a judge only on 12 November 2010. In its response, the State party admitted that Mr. Ismanov was brought, on 3 November 2010, to the Sughd Regional Department and charged with being a member of a

¹¹ See the Committee's general comment No. 20 (1992) on the prohibition of torture and cruel, inhuman or degrading treatment or punishment, para. 14; and general comment No. 31 (2004) on the nature of the general legal obligations imposed on States parties to the Covenant, para. 18.

criminal group or criminal organization on 10 November 2010 (para. 4.3), and that his detention was approved by a court on 13 November 2010 (para. 4.4). He was thus held unlawfully during the dates in question, which resulted in “disciplinary measures” against two police officers. The State party failed, however, to respond to the authors’ remaining claims under article 9, namely that the authorities did not inform Mr. Ismanov about the reasons for his initial arrest, nor did they bring him promptly before a judge (paras. 2.3–2.4).

7.6 The Committee recalls its general comment No. 35 (2014) on liberty and security of person, in which it refers to the prohibition on arbitrary and unlawful deprivations of liberty, i.e., deprivation of liberty that is not imposed on such grounds and in accordance with such procedure as are established by law. The two prohibitions overlap, in that arrests or detentions may be in violation of the applicable law but not arbitrary, or legally permitted but arbitrary, or both arbitrary and unlawful. Arrest or detention that lacks any legal basis is also arbitrary.¹² Article 9 also requires compliance with domestic rules that define when authorization to continue detention must be obtained from a judge or other officer,¹³ where individuals may be detained,¹⁴ when the detained person must be brought to court¹⁵ and the legal limits on the duration of detention.¹⁶ Persons deprived of their liberty must be assisted in obtaining access to effective remedies to enforce their rights, including initial and periodic judicial review of the lawfulness of the detention, and to prevent conditions of detention that are incompatible with the Covenant.¹⁷

7.7 In the present case, the Committee notes, based on the submissions by the parties, that Mr. Ismanov’s initial detention was both arbitrary and unlawful, as he was not informed, at the time, of the reasons for his arrest or of the charges against him, he was not brought promptly before a judge and he did not receive adequate remedies for the rights violated. In the circumstances as described, and in the absence of further relevant explanations by the State party, the Committee concludes that the State party violated Mr. Ismanov’s rights under article 9.

7.8 With respect to the authors’ claims under article 14 (1) regarding the right to a public hearing, the Committee notes the authors’ claims that the court hearings were closed as of 9 August 2011 because of an alleged concern for the safety and security of the participants in the process, including witnesses (para. 2.9). The Committee recalls the provisions of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, namely that all trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly.¹⁸ Article 14 (1) acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.¹⁹ The State party failed, however, to detail its security and safety concerns in the present case, nor did it list the measures taken to alleviate these concerns. The Committee therefore considers that the State party has not demonstrated why it was necessary in the present case to exclude the public from the proceedings. In the absence of further pertinent explanations on file, the Committee concludes that the State party applied a disproportionate restriction on Mr. Ismanov’s rights to a fair and public hearing, and therefore that his rights under article 14 (1) have been violated.

7.9 The Committee notes the time periods when the relatives and lawyer for Mr. Ismanov were not aware of his whereabouts (para. 2.3). The Committee also notes the authors’ claims that Mr. Ismanov was prevented from communicating with his lawyer and

¹² General comment No. 35, para. 11.

¹³ *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997), para. 8.1.

¹⁴ *Umarov v. Uzbekistan* (CCPR/C/100/D/1449/2006), para. 8.4.

¹⁵ *Gómez Casafranca v. Peru* (CCPR/C/78/D/981/2001), para. 7.2.

¹⁶ *Israil v. Kazakhstan* (CCPR/C/103/D/2024/2011), para. 9.2.

¹⁷ *Fijałkowska v. Poland* (CCPR/C/84/D/1061/2002), paras. 8.3–8.4; *A v. New Zealand* (CCPR/C/66/D/754/1997), para. 7.3; and general comment No. 31, para. 15.

¹⁸ General comment No. 32, para. 28.

¹⁹ *Ibid.*, para. 29.

defending himself through legal assistance, contrary to article 14 (3) (b). Furthermore, the authors claim that Mr. Ismanov's lawyer did not have full access to his client and that, on occasions, they could not meet with him in private (para. 2.6). The Committee recalls its general comment No. 32, in which it stated that adequate time and facilities to meet with a lawyer are an important element of the guarantee of a fair trial and an application of the principle of equality of arms.²⁰ The Committee notes that, although the State party contends generally that Mr. Ismanov was able to meet with his lawyers (para. 4.6), it does not refute the authors' specific claims that Mr. Ismanov was initially interrogated without being able to consult with his lawyer, that, on 8 January 2011, he was able to see his lawyer, but not to communicate with him and that, on other occasions, he was not able to meet with his lawyer in private (para. 2.6). The Committee concludes that, on the basis of the information before it, Mr. Ismanov was denied proper access to his lawyer and the ability to communicate with counsel in private,²¹ in violation of article 14 (3) (b) of the Covenant.

7.10 The Committee further notes the authors' claims that Ms. Nazhmutdinova experienced severe stress, especially when she learned that her husband had been taken away by a group of unknown men with a bag placed over his head, and that subsequently and for several days she was not able to locate him despite all her efforts (paras. 2.3 and 3.7), causing her to be afraid that she would never see him alive again. She was later aware that Mr. Ismanov was held in pretrial detention for nine months, during which time he complained that he was still being tortured (paras. 2.4 and 2.8), which, as a result, led to a significant deterioration in his health (para. 2.7). The Committee understands the anguish and mental stress that these circumstances caused to Ms. Nazhmutdinova, compounded by the inability or refusal of the State party to effectively investigate the claims of torture against her husband, and concludes that such treatment amounts to inhuman treatment of Ms. Nazhmutdinova, in violation of her rights under article 7 of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of Mr. Ismanov's rights under article 7, read alone and in conjunction with articles 2 (3), 9 and 14 (1) and (3) (b), of the Covenant and of Ms. Nazhmutdinova's rights under article 7 thereof.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors 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 take appropriate steps to (a) conduct a thorough, prompt and impartial investigation into the allegations of torture and ill-treatment and initiate criminal proceedings against those responsible; and (b) provide the authors with adequate compensation for the violations that occurred. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. 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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective 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 official languages of the State party.

²⁰ *Ibid.*, para. 32.

²¹ *Gridin v. Russian Federation*, para. 8.5.

Annex

Individual opinion of Committee member Vasilka Sancin (partly dissenting)

1. I concur with the Committee's conclusion that the State party has violated the rights of Mr. Ismanov under article 7, read alone and in conjunction with articles 2 (3), 9, 14 (1) and (3) (b) of the Covenant, but I cannot join the majority of the Committee in finding that the State party has violated Ms. Nazhmutdinova's rights under article 7.

2. The submissions of the authors and the State party reveal contradictory accounts of the treatment of Mr. Ismanov upon arrest on 3 November 2010, and during his detention and later imprisonment until his release in May 2015, upon completion of his sentence. I agree with the conclusion of the Committee (para. 7.3) that the State party failed to conduct a prompt and impartial investigation into the authors' complaints of torture, which made a remedy ineffective and that, in such circumstances, the State party failed to discharge its burden of proof that Mr. Ismanov had not been subjected to treatment contrary to article 7, read alone and in conjunction with article 2 (3). The finding of these violations is therefore supported by the State party's omission to honour its obligations to properly investigate under the relevant articles. It is in the light of the State party's lack of a detailed response on this issue that, despite the lack of any medical records or other evidence of torture offered by the authors, I agree with the Committee that due weight should be given to the authors' allegations and find a violation of article 7, read alone and in conjunction with article 2 (3).

3. Ms. Nazhmutdinova supports her claim of being a victim of a violation of article 7 with the fact "that she was told her husband had been taken away with a bag on his head, and that she was not able to ascertain his whereabouts for several days, which caused her severe shock and distress" (para. 3.7). She asserts that she was afraid that she would never see him alive again and suffered from suicidal thoughts. However, the authors did not dispute the State party's observations that Mr. Ismanov was found guilty of being an active member of a criminal organization, recognized as a terrorist organization, which was allegedly responsible for the terrorist attack on 3 September 2010, and that, prior to these events, Mr. Ismanov had already been sentenced to five years' imprisonment for hooliganism and resisting a police officer (para. 4.3).

4. Given the above, it was not the first time that Ms. Nazhmutdinova had been faced with her husband's arrest and imprisonment. Furthermore, she "was told" (she did not witness it herself) that her husband had been taken away with a bag on his head. She also claimed that she had not been able to ascertain her husband's whereabouts for several days, while Mr. Ismanov claimed (para. 5.2) that the complaints of torture were filed on his behalf by Ms. Nazhmutdinova on 4 November 2010, almost immediately after his initial arrest. This was followed by a more formal complaint filed on 10 November 2010. It is noteworthy that the authors based their claims on the facts presented above and did not argue it with the later developments (e.g. her later visits to the prison, when Mr. Ismanov allegedly provided her with details of his torture (para. 2.8), or informing her on 6 May 2014 that the prison authorities kept pressuring him and threatening to transfer him to another prison with harsher conditions (para. 5.4)).

5. The authors also do not dispute the observation by the State party that Mr. Ismanov did not complain about torture or mistreatment to the consul general of the Russian Federation (para. 4.7), as he initially claimed to be a citizen of the Russian Federation and was allowed to meet with the general consul of that country on 20 November 2010, while on 29 November 2010, after an inquiry, the general consul informed the authorities that the documents presented by Mr. Ismanov to prove his Russian citizenship were false. Furthermore, in response to an observation of the State party that a thorough examination (para. 4.8) into complaints of torture had not provided any evidence of torture, the authors claimed that the State party had failed to provide any details of the inquiry that had been carried out (para. 5.3).

6. Unlike in the cases of the well-established jurisprudence of the Committee on incommunicado detention, usually for a prolonged or indeterminate periods of time,¹ and/or in which the relatives were informed that their family members had lost their lives, without being provided with information on the exact circumstances of the deaths and what had happened to them in the preceding periods etc.,² the case at hand differs significantly, both as regards the duration and circumstances of the alleged suffering of Ms. Nazhmutdinova and the fate of her husband.

7. Considering all of the above, I am not persuaded that the State party's failure to comply with its obligations towards Mr. Ismanov led to a violation of Ms. Nazhmutdinova's rights under article 7. Such a finding would, in my view, unjustifiably lower the threshold for establishing inhuman treatment and would potentially open the floodgate to similar claims in numerous other cases. This is why, in the circumstances of the present case, I disagree with the Committee's conclusion that the anguish and mental stress caused to Ms. Nazhmutdinova, compounded by the inability or refusal of the State party to effectively investigate the claims of torture against her husband, amount to a violation of her rights under article 7 of the Covenant.

¹ *Quinteros v. Uruguay* (CCPR/C/19/D/107/1981), para. 14.

² *Sharma v. Nepal* (CCPR/C/94/D/1469/2006), paras. 7.6 and 7.9; and *Khadzhiyev v. Turkmenistan* (CCPR/C/122/D/2252/2013), para. 7.6.