



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 2042/2011

#### Decision adopted by the Committee at its 111th session (7–25 July 2014)

<i>Submitted by:</i>	Surat Davud Oglu Huseynov (represented by counsel, Eldar Zeynalov)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Azerbaijan
<i>Date of communication:</i>	5 July 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 12 April 2011 (not issued in document form)
<i>Date of adoption of decision :</i>	21 July 2014
<i>Subject matter:</i>	Torture to extract confession; lack of equality of arms during trial; heavier penalty than provided by the law; discrimination based on political opinion
<i>Substantive issues:</i>	Torture, ill-treatment, unfair trial, discrimination
<i>Procedural issues:</i>	<i>Ratione temporis</i> , non-exhaustion of domestic remedies, compatibility with the provisions of the Covenant
<i>Articles of the Covenant:</i>	7, 10, 14, 15 and 26
<i>Articles of the Optional Protocol:</i>	1, 3, 5, paragraph 2 (b)



## Annex

### **Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (111th session)**

concerning

#### **Communication No. 2042/2011\***

*Submitted by:* Surat Davud Oglu Huseynov (represented by counsel, Eldar Zeynalov)

*Alleged victims:* The author

*State party:* Azerbaijan

*Date of communication:* 5 July 2010 (initial submission)

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

*Meeting on 21 July 2014,*

*Having concluded* its consideration of communication No. 2042/2011, submitted to the Human Rights Committee by Surat Davud Oglu Huseynov, 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:

#### **Decision on admissibility**

1. The author of the communication is Surat Davud Oglu Huseynov, born in 1959, a national of Azerbaijan. He claims to be a victim of violations by the Republic of Azerbaijan of his rights under articles 7, 10, 14, 15 and 26 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 submitted by the author**

2.1 In 1992, the author was appointed by the newly elected President of Azerbaijan, Abulfaz Elchibey, as the President's representative in Nagorno-Karabakh, Vice Prime Minister and Commander of the 2nd Army Corps. In 1993, during the Nagorno-Karabakh conflict, about half of the soldiers in regiment No. 123 were killed. The author consequently ordered the regiment to retreat from the front line. The decision to withdraw

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\* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Lazhari Bouzid, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez Rescia, Fabián Omar Salvio, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.

regiment No. 123 was considered an act of treason by some elements in the regime. Several servicemen were arrested and the author was removed from his posts in February 1993. In June 1993, the Government, led by Abulfaz Elchibey, fell and the latter fled the country. On 30 June 1993, the new acting President, Heydar Aliyev, appointed the author as Prime Minister of Azerbaijan.

2.2 During September and October 1994, the commanders of the Special Police Detachment of the Ministry of the Interior entered into a conflict with the Prosecutor General, who was among the closest supporters of the author. There were rumours that the Special Police was planning to attack the author's supporters in Ganja, and checkpoints were established on the roads leading to Ganja in anticipation of the attack. On 4 October 1994, the President accused the author and his supporters of staging a coup d'état in Ganja – an accusation that was denied by the author in a speech delivered before Parliament on 6 October 1994. Nonetheless, over the following weeks, more than 200 of the author's supporters were arrested and charged with high treason. There were allegations that many of them were tortured and that some died in detention. The author fled to the Russian Federation and was subsequently removed from his official posts in Azerbaijan. The State party's authorities initiated a criminal investigation against the author on numerous charges, ranging from high treason to economic crimes and drug-related offences.

2.3 On 21 March 1997, the author was arrested in the Russian Federation, following an extradition request from Azerbaijan, under its bilateral agreement with the Russian Federation. He was extradited to Azerbaijan on 27 March 1997 on the basis of a commitment on the part of the Azerbaijan authorities that he would be tried on charges of common crimes only. On 12 May 1997, the Azerbaijan authorities requested the consent of the Russian Federation to bring additional charges against the author, including offences punishable by the death penalty, such as high treason, attempting to use armed forces against the nation and establishing illegal armed forces. The General Prosecutor of the Russian Federation gave consent for an amendment of the bill of accusation, on condition that Azerbaijan not seek to apply the death penalty against the author.

2.4 The author submits that he was tortured during his pretrial detention in Baku City Police Department. This allegation is supported by his lawyers, who reported visible scars on the author's head. The author was then tried by a panel of the Supreme Court. He claims that, during the trial, the Court ignored his allegations of torture and the fact that many of the witnesses withdrew their testimonies against him, stating that they had been extracted by torture. The author was convicted on 10 February 1999 and sentenced to life imprisonment. The verdict was not subject to appeal. His property and the property of his family, including real estate obtained in 1941 and 1987, were confiscated.

2.5 On 10 February 1998, the Parliament of Azerbaijan had adopted a new law, amending the Criminal Code and other relevant legislation. The new law abolished the death penalty and introduced instead a new penalty – life imprisonment. The author submits that at the time that he had allegedly committed the crimes for which he was sentenced, the punishment of life imprisonment was not provided for under Azerbaijani law, and that, as a result, the imposition of the sentence of life imprisonment violated his rights under article 15, paragraph 1, of the Covenant. He also maintains, in this connection, that, had he been tried before 10 February 1998, he would have been sentenced to 15 years' imprisonment, which was the gravest punishment provided by law at the time of the alleged commission of the crimes (except for the death penalty, which the State party made a commitment not to apply in his case).

2.6 Following his conviction, the author spent seven years as a single occupant in a prison cell, the last two of those years being after the entry into force of the Optional Protocol for Azerbaijan. During the first two years of his sentence, he was incarcerated in a former death-row cell in Bayil prison. Afterwards he was transferred to the Qobustan prison

and placed alone in a “two-man” cell, measuring 2.55 m by 3.85 m, with a 3.5-m high ceiling. The author submits that his “solitary confinement” constituted a form of “moral torture” for him. The cell contained a toilet, fenced only by a 1-m high wall. The walls, ceiling and floor of the cell were made entirely of concrete, resulting in it being very hot during the summer, and cold during the winter. Furthermore, the author submits that during winter, the heating was insufficient. The cell had one window made of polyethylene film, instead of glass. The author submits that the size of the window was smaller than the national prisons standard and that he was deprived of adequate natural ventilation and light. He also submits that the prison food was monotonous, unbalanced, poor in meat and vitamins and below the nationally established standards. The author refers to the 2000 report of the Special Rapporteur on Torture on his mission to Azerbaijan (E/CN.4/2001/66/Add.1, para. 55), in which he noted that no recreational or educational activities were available in the Qobustan prison. He also refers to the 2003 recommendation of the Committee against Torture (CAT/C/CR/30/1, para. 7 (l)) to the Government to review the treatment of prisoners serving life sentences, and to a number of reports by international and national NGOs describing the bad conditions in that prison. The author further submits that he was denied medical care although he suffered from cardiac problems.

2.7 The author maintains that his trial and conviction were politically motivated. In 2001, the Council of Europe Committee of Ministers appointed a panel of three independent experts to review cases of political prisoners in Armenia and Azerbaijan. Their report, dated 16 July 2001, listed the author among those incarcerated individuals they considered to be political prisoners. The author also refers to judgements of the European Court of Human Rights in the cases of some of his supporters, such as *Abbasov v. Azerbaijan*,<sup>1</sup> in which the Court concluded that there was a “systemic situation” of political imprisonment in Azerbaijan.

2.8 The author was released from prison by an official pardon issued in 2004.

2.9 On 1 September 2000, following a reform of the Criminal Code and the Criminal Procedure Code, a so-called Transitional Law entered into force in Azerbaijan, abolishing the old codes and establishing rules for reconsideration of final judgements delivered pursuant to the codes. In May 2005, the author lodged a cassation appeal under the 2000 Transitional Law against the 1999 verdict before the Supreme Court. That cassation appeal was rejected on 9 August 2005. On 5 March 2007, the author lodged another cassation appeal, which was dismissed by the Chairman of the Supreme Court on 12 March 2007, on the grounds that it did not meet the required temporal deadline. On 21 August 2007, the author appealed the decision of the Supreme Court before the Constitutional Court; that appeal was also rejected on grounds that a copy of the last Supreme Court decision was not enclosed in the appeal submission and that the appeal was “ill-founded”. On 6 December 2007 and 6 June 2008, the author attempted to lodge further appeals before the Constitutional Court. Those appeals were considered as repeat complaints and rejected. The author was notified of the rejection of his appeals by letters issued by the Department of Citizen’s Reception and Complaints. It was only on 24 December 2009 that the Constitutional Court, for the first time, issued a formal decision of inadmissibility in the author’s case, stating that the last exhausted remedy was the Supreme Court decision of 9 August 2005, and that the author had missed the legislative deadline to challenge that decision. The author contends that he has exhausted all available and effective domestic remedies in Azerbaijan.

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<sup>1</sup> See European Court of Human Rights, *Abbasov v. Azerbaijan*, application No. 24271/05, judgment adopted on 17 January 2008, paras 36-42.

### **The complaint**

3.1 The author claims to be a victim of violations by Azerbaijan of his rights under articles 7, 10, 14, 15 and 26 of the Covenant.

3.2 The author submits that he was subjected to torture and inhuman and degrading treatment during the pretrial investigation, and that despite the fact that the ill-treatment happened before the entry into force of the Covenant, it has had long-term consequences for his physical and mental health. He reiterates that he spent seven years in “solitary confinement” and submits that the foregoing experience constitutes a violation of his rights under articles 7 and 10, paragraph 1, of the Covenant.

3.3 The author maintains that the court proceedings of 1999 and 2005 were unfair and violated the principle of equality of arms. They therefore violated his rights under article 14, paragraphs 1 and 3, of the Covenant.

3.4 The author also maintains that he received a heavier penalty than the one applicable at the time that the alleged offence took place, which is a violation of his rights under article 15, paragraph 1, of the Covenant.

3.5 Finally, the author maintains that he was discriminated against because he was a political prisoner and that his rights under article 26 of the Covenant have been violated.

### **The State party’s observations on admissibility**

4.1 On 14 June 2011, the State party submitted that the communication was inadmissible within the meaning of articles 1 and 5, paragraph 2 (b), of the Optional Protocol.

4.2 With regard to the author’s allegations under articles 7 and 10, paragraph 1, of the Covenant, the State party submits that the author failed to exhaust the available and effective domestic remedies. It maintains that the author had the opportunity to raise the issues relating to the conditions of his detention in prison before the national courts. Under article 449 of the Code of Criminal Procedure, an accused, or his defence counsel, may file with a court a complaint against procedural acts or decisions of the prosecuting authorities (including authorities in detention facilities) in connection with violation of the detainee’s rights, torture or other type of ill-treatment. The author failed to do so, despite the fact that the national courts were both practically and directly accessible to the author and that there were no obstacles preventing him from having access to the courts. It further submits that the author also had the right to complain under article 1100 of the Civil Code, articles 5, 16, 430 of the Code on Administrative Offences, articles 10 and 14 of the Code on Enforcement of Criminal Sanctions and other domestic legal norms. The State party maintains that a civil action with respect to the conditions of detention and lack of adequate medical treatment is an effective remedy and refers to the case of *Mammadov v. Penitentiary Establishment No. 15 of the Ministry of Justice of the Republic of Azerbaijan*, which was considered by the Nizami District Court. The State party also maintains that the author could have also benefited from administrative remedies, namely, by filing a complaint with the Ministry of Justice. It refers to a case in which, on 14 December 2007, the Deputy Minister of Justice imposed a disciplinary penalty on the Deputy Director of a detention centre for treating a detainee in a degrading manner. That penalty was imposed following an internal investigation, which was not initiated by the detainee. The State party further refers to a decision of the Deputy Minister of Justice to overturn the decision of the Director of a penitentiary to place a prisoner in a punishment cell, following a complaint lodged by the prisoner.

4.3 With regard to the author’s allegations relating to article 14, the State party notes that the Optional Protocol entered into force for it on 27 February 2002, therefore it

considers any complaints relating to events that occurred prior to that date, namely, allegations regarding the 1999 trial, as being outside the Committee's competence *ratione temporis*. As for the proceedings before the Supreme Court which dismissed the author's cassation appeal on 9 August 2005, the State party submits that the author failed to substantiate his complaints. The State party maintains that, from the Supreme Court decision, it appears that the author had the benefit of adversarial proceedings and was able to submit to the Court the arguments he considered relevant to his case. Insofar as the author's complaint concerns the results of the proceedings before the Supreme Court, the State party submits that it is not the Committee's function to deal with errors of fact or the law allegedly committed by a national court, unless they infringe upon the rights and freedoms protected by the Covenant. The State party maintains that this part of the communication is therefore incompatible with the provisions of the Covenant and should be rejected pursuant to article 3 of the Optional Protocol.

4.4 With regard to the author's allegations under article 15, paragraph 1, of the Covenant, the State party submits that "the commutation of the death penalty by the operative provision of the parliamentary act took place on 10 February 1998. This was an instantaneous act, insofar as it had the effect of an immediate change in the status of the convicts concerned, including the author". The State party maintains therefore that it falls outside of the competence *ratione temporis* of the Committee. Furthermore, the Law of 10 February 1998 that amended the provisions of the old Criminal Code, did not seek to impose a new penalty for criminal offences, but rather, the amendment "was essentially a general commutation of the death penalty to life imprisonment". Pursuant to the domestic law of Azerbaijan, any new legal provision ameliorating the position of criminally liable persons is applied retrospectively. It also argues that in comparison with the death penalty, life imprisonment is a lighter penalty, since it ensures the person's right to life as protected by the Covenant and all other principal international human rights instruments. The State party considers the author's complaint manifestly ill-founded, because no heavier penalty had been imposed on the applicant than the one that was applicable at the time the criminal offences were committed.

4.5 Furthermore, the State party notes that the applicability of the life imprisonment sentence in the author's case was explicitly decided by the domestic court during the proceedings that ended on 10 February 1999 and, as a result, that part of the communication does not fall within the Committee's competence *ratione temporis*. The State party notes moreover, that the author was released from imprisonment on 17 March 2004, after having spent no more than seven years in prison, which is less than the 15-year term that he concedes he was eligible to receive upon conviction. The State party maintains that this claim should be rejected under article 3 of the Optional Protocol as incompatible with the provisions of the Covenant. It further refers to the jurisprudence of the European Court of Human Rights in a similar case, *Hummatov v. Azerbaijan*.<sup>2</sup>

4.6 With regard to the author's allegations relating to article 26 of the Covenant, the State party submits that any complaints relating to events that occurred before the entry into force of the Optional Protocol are outside the Committee's competence *ratione temporis*. As for the proceedings before the Supreme Court, which dismissed the author's cassation appeal on 9 August 2005, the State party observes that the author failed to substantiate his complaints since nothing in the decision of the Supreme Court indicated that he was discriminated against on any grounds. Moreover, the author had at his disposal a wide

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<sup>2</sup> See European Court of Human Rights, *Hummatov v. Azerbaijan*, applications No. 9852/03 and 13413/04, decision of 18 May 2006

range of legal opportunities to complain about alleged discrimination during his imprisonment (see para. 4.2 above), but he failed to exhaust them.

4.7 The State party concludes that the communication is incompatible with the provisions of the Covenant and should be rejected under article 3 of the Optional Protocol.

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

5.1 On 24 September 2011, the author submitted his comments on the State party's observations on admissibility. With regard to the State party's argument that he failed to exhaust domestic remedies concerning his claims under articles 7 and 10 of the Covenant, the author submits that article 449 of the Criminal Procedure Code did not exist at the time of his preliminary investigation and initial sentencing; it entered into force on 1 September 2000. The author also submits that some of his lawyers' motions were rejected by the Supreme Court, which acted as first and last instance in his case, and that he had no right to appeal. He maintains that his lawyer had "mentioned the numerous allegations of torture against witnesses", but that no effective investigation of those claims were conducted. He maintains that he had used all available remedies at the time. The author further submits that before and after his arrest, a number of his relatives, including his brother, were arrested and held as "de facto hostages to neutralize the campaign" for his liberation. He submits that one of his relatives is still serving a sentence of 25 years' imprisonment, and that his elderly mother has been repeatedly intimidated. The author further maintains that from February 1998 until January 2001, he was held in "solitary detention" in the Bayil Prison. Afterwards, he was transferred to the Qobustan prison where he was also kept alone in his cell. Because of the extremely high mortality rate of inmates and the "abuses of duties by prison personnel", the author feared that he might be killed if he were to file legal motions while in prison. He only began attempts to have his case reviewed after he was pardoned on 17 March 2004.

5.2 The author submits that, when he tried to exercise his right to have his sentence reviewed in May 2005, he was not permitted to lodge an appeal before the Appeals Court; he could only file a cassation appeal before the Supreme Court, and therefore he was deprived of the "opportunity to check the facts". The author refers to the jurisprudence of the European Court of Human Rights, which concluded, in a similar case, that a restriction had been imposed on the applicant's right of access to a court and, therefore, on his right to a fair trial.<sup>3</sup>

5.3 In response to the State party's submission that civil remedies could be effective in respect of complaints regarding conditions of detention, the author submits that in the case of Mr. Mammadov mentioned by the State party (see para. 4.2 above), the prison administration had refused to enforce a decision of the domestic court regarding the change of penitentiary institution and Mr. Mammadov died five months later.<sup>4</sup> Subsequently, all domestic court instances rejected the family's complaints regarding the failure of the State party to implement the said court decision in a timely manner, and the person responsible still enjoys impunity. The author also submits that the other case alluded to by the State party is irrelevant, because it concerned an individual in pretrial detention. He notes, however, that, in that case, the detainee himself did not submit any complaints, most likely because he was "afraid". The author further submits that all the examples given by the State

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<sup>3</sup> See European Court of Human Rights, *Hajiyev v. Azerbaijan*, application No. 5548/03, judgment adopted on 16 November 2006, para 47.

<sup>4</sup> The author also submits that Mr. Mammadov's case was mentioned in the concluding observations of the Committee against Torture (CAT/C/AZE/CO/3, para. 5).

party are from the period 2007 to 2009 and he maintains that 10 years earlier similar requests by his lawyers were not even answered.

5.4 The author submits that the public allegations of torture in his case have remained unanswered by the State party; he refers to the report transmitted to the Secretary General of the Council of Europe by the independent experts, “Cases of alleged political prisoners in Armenia and Azerbaijan”,<sup>5</sup> which states that the author should be regarded as a political prisoner, and said that scars from the wounds inflicted by torture were visible on his head at the time of the experts’ visit.

5.5 The author further submits that although torture was defined as a crime in the domestic legislation on 1 September 2000, not a single case of torture has been prosecuted since. The Ombudsman Institute and the National Preventive Mechanism have not found any cases of torture since their establishment. The author also submits that persons found guilty of a crime who had been subjected to torture are not eligible for compensation under article 4 of the Law of the Republic of Azerbaijan on “Compensation for damage caused to individuals as a result of illegal actions of investigative and preliminary inquiry bodies, the prosecution and the courts”<sup>6</sup> nor under article 56 of the Code of Criminal Procedure.<sup>7</sup>

5.6 In relation to his allegations under article 14 of the Covenant, the author further refers to the judgement of the European Court of Human Rights in the case of *Abbasov v. Azerbaijan*;<sup>8</sup> he states that it is a relevant precedent and notes that in paragraphs 40 and 41 of the judgement, the Court reiterates that “the issue of the fairness of the applicant’s trial by the first instance court was found to fall outside the Court’s competence *ratione temporis*. However, despite being precluded from deciding on that issue, the Court did not ignore the fact that the applicant was included in the list of “alleged political prisoners” submitted to the experts of the Secretary General upon Azerbaijan’s accession to the Council of Europe, indicating that there were certain doubts as to the fairness of the

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<sup>5</sup> See Council of Europe “Cases of alleged political prisoners in Armenia and Azerbaijan: Report transmitted to the Secretary General of the Council of Europe by the independent experts, Messrs Stefan Trechsel, Evert Alkema and Alexander Arabadjiev” (Strasbourg, 16 July 2001), available from <https://wcd.coe.int/ViewDoc.jsp?id=232757&Site=COE>.

<sup>6</sup> Law of the Republic of Azerbaijan No. 610-IQ of 29 December 1998 on “Compensation for damage caused to individuals as a result of illegal actions of investigative and preliminary inquiry bodies, the prosecution and the courts”. The author did not provide the text of the article.

<sup>7</sup> Article 56 of the Code of Criminal Procedure, “Persons entitled to damages”, reads as follows:

“56.0. The following persons shall have a right to compensation for the prejudice caused by error or abuse by the prosecuting authority:

56.0.1. an accused who is acquitted;

56.0.2. a person against whom the criminal prosecution is discontinued on the grounds of Articles 39.1.1., 39.1.2., 39.1.6.-39.1.8. and 39.2. of this Code;

56.0.3. a person against whom the criminal prosecution should have been discontinued on the grounds of Articles 39.1.3., 39.1.4., 39.1.10. and 39.1.11. of this Code, but was not discontinued in time and was pursued.

56.0.4. a person against whom the criminal prosecution should have been discontinued on the grounds of Article 39.1.12. of this Code, but continued although that decision was upheld;

56.0.5. a person unlawfully arrested or placed in a medical or educational institution by force or a person kept in detention on remand without legal grounds for longer than the prescribed period of time;

56.0.6. a person unlawfully subjected to coercive procedural measures during the criminal proceedings in the circumstances provided for in Articles 176 and 177 of this Code.”

Available from <http://www.legislationline.org/download/action/download/id/1659/file/dddece81440fa5295fc11e6b2b1.htm/preview>.

<sup>8</sup> European Court of Human Rights, *Abbasov v. Azerbaijan*, application No. 24271/05, judgment adopted on 17 January 2008.



applicant's conviction in 1996." In those circumstances, the Court considered that "a retrial or the reopening of the case, if requested, represents in principle an appropriate way of redressing the violation in the present case."

5.7 The author reiterates that he was sentenced on 10 February 1999 on the basis of the Law of 10 February 1998 "under the provision on new punishment". He notes that he was extradited from the Russian Federation on the condition that the death penalty would not be applied in his case, that, on an unspecified date in 1997, the State party had "*de facto* agreed with Russia a maximal term of 15 years of imprisonment", and that, if the death penalty had not been abolished in 1998, he would not have been sentenced to more than 15 years' imprisonment. The author also maintains that the date on which judicial proceedings in his case terminated was not 10 February 1999, but 9 August 2005, the date on which the Supreme Court rejected his cassation appeal.

5.8 Regarding his allegations regarding article 26 of the Covenant, the author submits that the Council of Europe experts considered him a "political prisoner," and thereby confirmed discrimination against him on the basis of political opinion.

5.9 The author further submits that the State party's argument regarding the application of *ratione temporis* means that it considers false accusations and an unfair trial as events that cannot create continuous violations, despite the fact that the author had spent seven years in "solitary confinement", two of which were after the entry into force of the Optional Protocol for the State party.

5.10 The author submits that the function of the Supreme Court as an appeal instance was to check for violations of the procedure, including "the lawyers' arguments ignored by the same Supreme Court in February 1999". During the trial, the lawyers had raised the fact that witnesses had retracted their testimonies, stating that they had been extracted under torture, demanded additional forensic examination and listed "falsifications". However, the Supreme Court had confirmed the first instance judgement.

5.11 The author maintains that the State party failed to protect his rights guaranteed by articles 7, 10, 14, 15 and 26 of the Covenant.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 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.

6.2 The Committee has 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.

6.3 The Committee notes the author's claims that he was held in "solitary confinement" and that the conditions of detention violated his rights under article 10 of the Covenant and that as a political prisoner, he was discriminated against, in violation of his rights under article 26 of the Covenant. The Committee, however, observes that those claims were not brought to the attention of the authorities on any occasion before the author's complaint to the Committee. The Committee notes the author's explanation that he was afraid of reprisals if he submitted complaints while serving his prison sentence, but observes that the author was released from prison in 2004 and does not appear to have submitted any complaints regarding the above issues after his release. Accordingly, the Committee considers that those claims are inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

6.4 The Committee notes the author's claim that his rights under article 14 were violated during the appeals proceedings that he had initiated in 2005, but observes that the author has not provided any information to substantiate his claim that the proceedings were unfair and in violation of the principle of equality of arms. As a result, the Committee considers that claim inadmissible under article 2 of the Optional Protocol.

6.5 The Committee also notes the author's allegations that he was tortured during the pretrial investigation, that his rights under article 14 of the Covenant were violated during the 1999 trial, and that he was sentenced to a heavier penalty than the one applicable at the time when the offences he had allegedly committed took place, in violation of his rights under article 15, paragraph 1, of the Covenant. The Committee notes that the State party did not attempt to contradict the author's claim that he was tortured; it considers this part of the author's communication to be substantiated as a factual matter for the purpose of admissibility (see also para. 7.2 below). Nonetheless, the Committee notes the State party's submission that any complaint relating to acts and omissions that occurred prior to the entry into force of the Optional Protocol for the State party fall outside the Committee's competence *ratione temporis*. The Committee observes that the author's trial and conviction took place in 1999, and that his alleged torture took place before that, while he was in pretrial detention. The Committee therefore finds that, under those circumstances, it is precluded, *ratione temporis*, from considering those claims insofar as they relate to acts and omissions by the State party prior to the entry into force of the Optional Protocol therefor which implicate its obligation to respect and ensure the author's rights under article 7, 14 and 15 of the Covenant. The Committee also notes that the author does not contest the State party's submission that any flaw in the imposition of the sentence of life imprisonment was rescinded by the author's early release from prison, and finds that the author also failed to substantiate a violation of the provisions of the Covenant in that regard.

6.6 However, the Committee notes the author's claim that his ill-treatment during his pretrial detention had long-term consequences, which resulted in a continuous violation of his rights under article 7. It also notes the State party's submission that all of the author's claims under article 7 are inadmissible and incompatible with the provisions of the Covenant. 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 only be considered by the Committee if those "violations continue after that date or continue to have effects which, in themselves, constitute a violation of the Covenant".<sup>9</sup> Also, 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".<sup>10</sup> Nonetheless, the Committee does not regard isolated acts of torture as giving rise to a continuous violation of the Covenant,<sup>11</sup> even if such acts have resulted in a lengthy imprisonment extending in time beyond the relevant date for the entry into force of the Covenant or Optional Protocol.<sup>12</sup> Furthermore, the Committee cannot regard the decisions of the Supreme Court and the

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<sup>9</sup> See communication No. 1070/2002, *Kouidis v. Greece*, views adopted on 28 March 2006, para. 6.3.

<sup>10</sup> See communications No. 1159/2003, *Sankara et al. v. Burkina Faso*, views adopted on 28 March 2006, para. 6.3; also No. 1033/2001, *Singarasa v. Sri Lanka*, views adopted on 21 July 2004, para. 6.3; and No. 851/1999, *Zhurin v. Russian Federation*, decision on admissibility of 2 November 2004, para. 6.4

<sup>11</sup> See communications No. 1070/2002, *Kouidis v. Greece*, views adopted on 28 March 2006, para. 6.4; and No. 1633/2007, *Avadanov v. Azerbaijan*, views adopted on 25 October 2010, para. 6.2.

<sup>12</sup> See communications No. 851/1999, *Zhurin v. Russian Federation*, decision on admissibility of 2 November 2004, para. 6.5; and No. 878/1999, *Kang v. Republic of Korea*, views adopted on 15 July 2003, para. 6.3.

Constitutional Court of the State party not to overturn the 1999 Supreme Court judgement because of a lack of substantiation and a time bar, as an affirmation of the substance of that earlier sentence. This is especially so, because the author has not demonstrated that he had raised the torture allegations during the 2005 proceedings or at any other time after the entry into force of the Optional Protocol for the State Party. Accordingly, the Committee considers that the allegations presented by the author do not give rise to a continuous violation of the Covenant and are inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
  - (b) That the present decision shall be communicated to the State party and to the author.
-