



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. 2295/2013*, **

<i>Communication submitted by:</i>	Davron Abdurakhmanov (represented by counsel from the non-governmental organization, Freedom Now)
<i>Alleged victim:</i>	Salijon Abdurakhmanov
<i>State party:</i>	Uzbekistan
<i>Date of communication:</i>	1 October 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 29 October 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	29 March 2019
<i>Subject matter:</i>	Detention and imprisonment of the author's father following an unfair trial
<i>Procedural issue:</i>	Non-substantiation of the claims
<i>Substantive issues:</i>	Arbitrary detention; fair trial; presumption of innocence; right to appeal; freedom of expression
<i>Articles of the Covenant:</i>	9 (1) and (4), 14 (1), (2) and (5) and 19 (2)
<i>Article of the Optional Protocol:</i>	2

1. The author of the communication is Davron Abdurakhmanov, an Uzbek national who is writing on behalf of his father, Salijon Abdurakhmanov, also an Uzbek citizen, who was, at the time of submission, imprisoned in Uzbekistan after being convicted on drug-related charges. The author claims that the State party violated his father's rights under articles 9 (1) and (4), 14 (1), (2) and (5) and 19 (2) of the Covenant. The Optional Protocol entered into force for Uzbekistan on 28 December 1995. The author is represented by counsel.

* Adopted by the Committee at its 125th session (4–29 March 2019).

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



The facts as presented by the author

2.1 The author's father is a journalist and a human rights activist. He is known for his reporting on government corruption and human rights abuses in Karakalpakistan, an autonomous republic in Uzbekistan. He was the representative from Karakalpakistan for the human rights organization, Committee for the Defence of the Rights of the Individual. As a member of the Real Union of Journalists of Uzbekistan, the author's father also contributed to several pieces published in *The New York Times* and broadcast on Radio Free Europe/Radio Liberty. The author claims that the criminal justice system in Uzbekistan is used to repress political opponents, that the executive branch fully controls the judiciary and that there is a lack of democratic governance in the country. In addition, he states that Uzbek police are notorious for charging dissidents with drug possession, extortion and tax evasion in order to prevent them from continuing their work exposing government corruption and human rights violations.

2.2 On 7 June 2008, at around 5 p.m., traffic police stopped the author's father while he was in his vehicle to check his identity documents. After examining his documents, one of the officers claimed that drug-detection dogs had picked up the scent of drugs. The officer then searched the vehicle and claimed that he had found small bags of marijuana and opium in the trunk of the car. The author's father was arrested. The author believes the drugs in question were planted in his father's car. His father was also asked to perform a breath test, which identified the presence of alcohol. The author admits that his father drank a small quantity of beer earlier that day, but claims that the authorities never administered a proper forensic medical examination to prove that his father was actually intoxicated.

2.3 The author's father was initially charged with illegal drug possession without intent to sell.¹ On 9 June 2008, he tested negative for narcotics in a blood test. On 10 June 2008, the Nukus City Court placed him in pretrial detention. On 17 June 2008, police conducted a forensic chemical examination of the nails, fingers and mouth of the author's father and found traces of marijuana. However, he admitted that he had touched the bag of marijuana twice on the day of his arrest, including when the forensics expert asked him to take a pinch from the bag and smell it to confirm it was marijuana. The author's father subsequently requested an additional forensic examination to verify the traces of marijuana on his fingers. The test results² confirmed that he had not used marijuana and the traces on his fingers were the result of his contact with the substance on the day of his arrest. On 12 July 2008, his lawyer filed a written request to the authorities asking for a forensic examination of his client's car and the bags of drugs as part of the pretrial investigation. On 4 August 2008, investigator E.N. declined the request.

2.4 After the arrest, during a search of the home of the author's father, police also confiscated printed, audio and video materials related to his journalistic and human rights activities. Police seized, for example, a biography of the leader of the opposition party and later questioned the author's father about it. His lawyer stated that the authorities seemed much more interested in investigating his journalistic work than investigating the charges related to consuming or selling drugs.

2.5 On 2 August 2008, prosecutors changed the charges against the author's father to illegal possession of narcotic substances with intent to sell.³ The author claims that this change was due to the fact that his father tested negative for drug use. The new charges were much more serious, carrying a penalty of up to 20 years of imprisonment.

2.6 The trial of the author's father began on 12 September 2008 at Takhtakupir District Court in Karakalpakistan. The trial was held in a small room, which, according to the author, was done to prevent the public from attending it, and only relatives were able to attend. At a hearing on 9 October 2008, the prosecution played a substantially edited

¹ See article 276 of the Criminal Code which criminalizes the illegal production, purchase, storage, carriage or transmission of narcotic and psychotropic substances without intent to sell. The offence is punishable by up to three years of imprisonment, or up to five years of imprisonment for "large amounts".

² A copy of the results of this test has not been provided.

³ See article 273 of the Criminal Code.

version of a videotape made at the alleged crime scene. During the trial, the defence made repeated requests for the full version of the video to be played. The author's father also requested a forensic examination of fingerprints on his car and the bags of marijuana and opium but his requests were denied.

2.7 On 10 October 2008, Takhtakupir District Court convicted the author's father of drug possession with intent to sell and sentenced him to 10 years in prison. On 21 October 2008, he submitted an appeal to the Supreme Court of Karakalpakistan. On 19 November 2008, the Appeals Board of the Supreme Court of Karakalpakistan upheld the lower court's decision but failed to provide any reasons for its decision. In May 2009, both his defence lawyers were deprived of their bar licences as a result of the new re-examination process. On 17 May 2011, his new lawyer sent a complaint to the Supreme Court of Uzbekistan under the supervisory review procedure. On 1 June 2011, the Supreme Court of Uzbekistan upheld his conviction but failed to provide any substantive reasons for its decision. On 29 July 2011, another complaint was filed to the Supreme Court of Uzbekistan. On 17 August 2011, the Supreme Court of Uzbekistan, in a one-page letter, upheld the lower instance court's decision again. As of August 2011, the author's father has been found to be in violation of prison rules twice. The author states that accusing prisoners of violating prison rules is done to prevent them from being eligible for an amnesty.

2.8 The author asks the Committee to find that the State party has violated its obligations under the Covenant to provide his father with an effective remedy and to urge the State party to introduce safeguards to prevent such violations from happening in future. The author also claims that his father has exhausted all effective remedies available to him.

The complaint

3.1 The author claims that his father's right to be free from arbitrary arrest or detention under article 9 (1) and (4) of the Covenant has been violated. The violations of his father's fair trial rights are of such gravity as to give his deprivation of liberty of an arbitrary character.

3.2 The author also alleges a violation of article 14 (1) given the failure of the trial, appeal and supervisory review courts to prevent serious procedural and substantive mistakes that, according to the author, indicate the bias of the courts. The author cites the failure to grant the requests of the defence to play the full version of the videotape made on the day of his father's arrest as evidence of a violation in that regard. Instead, a substantially edited version of the video was played with approximately three hours of footage missing. Moreover, the author argues that the forensic examination results that held that the trace amounts of marijuana on his father's fingers were a result of his contact with the substance on the day of his arrest were not given any consideration by the trial court. In addition, the trial court failed to satisfy the defence's numerous requests to conduct additional forensic examinations. Violations of his father's procedural rights were raised in petitions to both appeal and supervisory review courts but no action was taken in that regard. The author further contends that the courts that dealt with his father's case were not independent. The case against his father was a case of political persecution and there were no known instances where a case brought by the prosecution against a member of the political opposition, an independent journalist or a human rights defender has ended in an acquittal.

3.3 The author argues that his father's rights under article 14 were further violated as his right to be presumed innocent was not respected. The author submits that the court convicted his father on charges of drug possession with intent to sell without any discussion of how it was established that his father was attempting to sell drugs. Furthermore, the trial court denied the defence's requests to conduct forensic examinations for fingerprints on the car and the bags of drugs or to take into consideration forensic examination results that showed his father's innocence.

3.4 The author further argues that his father was a victim of a violation of article 14 (5) of the Covenant, as the appeals courts failed to provide duly reasoned judgments and address the substance of the appeals. The author argues that the Appeals Board decision of 19 November 2008 merely restated the lower court's reasoning without inquiring into the

substantive discussion of the trial court's decision and the claims raised by the defence. The author alleges that the Supreme Court's decision of 1 June 2011 did not provide any substantive reasons either. On 17 August 2011, the Supreme Court of Uzbekistan again only provided a one-page reply with no substantive discussion according to the author. Furthermore, the author affirms that the State party violated his father's rights under article 14 (5) as his right to have his conviction reviewed by a higher tribunal was not respected. The author argues that the Appeals Board, failed to give a full evaluation of the evidence used at trial and the conduct of the lower court. The author alleges that it merely limited itself to restating the facts of the case.

3.5 The author also claims that his father's right to freedom of expression under article 19 (2) of the Covenant was violated, as during the search of his house, printed, audio and video materials related to his journalistic work and human rights activism had been seized. Furthermore, the entire arrest, trial and conviction on fabricated charges were a violation of his father's right to freedom of expression.

State party's observations on the merits

4.1 In a note verbale dated 4 January 2016, the State party challenged the claims made by the author. The State party recalls that, on 10 October 2008, Takhtakupir District Court sentenced the author's father to 10 years of imprisonment. According to the Court verdict, on 7 June 2008, Salijon Abdurakhmanov was stopped in the city of Nukus while he was driving a vehicle under the influence of alcohol. Upon inspection, police officers found 114.18 grams of marijuana and 5.98 grams of opium in his car.

4.2 The charges against Mr. Abdurakhmanov were heard in open court. His guilt was proven and supported by evidence from several witnesses, the results of the forensic examination, the description of physical evidence and other materials gathered during the investigation. The Supreme Court of Karakalpakstan rejected the author's appeal on 19 November 2008.

4.3 Mr. Abdurakhmanov did not draw lessons from his conviction and instead violated the rules of the prison where he was serving his sentence. At the time of submission, Mr. Abdurakhmanov has several pending disciplinary violations and "does not seem to intend to improve his behaviour". Mr. Abdurakhmanov was convicted for crimes that he committed, and his conviction had nothing to do with his journalistic or human rights activities.

4.4 On 12 and 20 May 2016, the State party further submitted that Mr. Abdurakhmanov had continued to violate the rules and regulations of the prison where he was being held, which made him ineligible for early release.

Author's comments on the State party's observations on the merits

5.1 Responding to the State party's observations, the author submits that, instead of addressing specific claims made by him on behalf of his father, the State party instead has accused his father of violating the terms of his detention and prison regulations, which allegedly led to disciplinary measures against him. The State party claims that the charges against the author's father were heard in "open court". While only relatives had been allowed in the small courtroom, the assertion is nevertheless irrelevant, since the author is not claiming that his father's right to a public trial was violated.

5.2 In his complaint the author does allege, however, that his father's arrest and conviction were punishment for undertaking independent journalism and human rights advocacy. The State party's reply does not acknowledge or deny that police seized journalistic materials from his father's home after his arrest, even though such materials were clearly irrelevant to the charges. Those practices are consistent with the State party's desire to imprison journalists and human rights defenders on fabricated charges.

5.3 The State party does not specify what exact terms of detention and what prison regulations his father is alleged to have violated, and even his family is not aware of this information. As discussed in the initial communication, accusing prisoners of conscience of having violated prison rules is a common tactic used by the State party in order to prevent

such prisoners from being eligible for early release or amnesty. In conclusion, the author submits that the State party has failed to provide a specific and substantiated response to his allegations.

5.4 On 4 October 2017, the author informed the Committee that his father had been released on the same date, but asked the Committee to issue an opinion even though his father was no longer behind bars.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether 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 author's claim that his father has exhausted all effective domestic remedies available. In the absence of any objection by the State party in that 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 author has sufficiently substantiated his claims under articles 9 (1) and (4), 14 (1), (2) and (5) and 19 (2) of the Covenant. It therefore declares the communication admissible and proceeds with its consideration of the merits.

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 Regarding the author's claims that his father was arbitrarily detained and imprisoned as a result of his father's journalistic and human rights activities, in violation of his rights under article 9 (1) of the Covenant, the Committee notes the author's submission that his father has reported on government corruption and human rights abuses, has contributed to articles in such media outlets as *The New York Times* and Radio Free Europe/Radio Liberty, and that he was a representative for the human rights organization, the Committee for the Defence of the Rights of the Individual. In this regard, the Committee recalls its long-standing jurisprudence that the protection against arbitrary detention is to be applied broadly and that the term "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability and due process of law.⁴ The Committee also recalls that an arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant, including freedom of opinion and expression, is arbitrary.⁵ The Committee notes the author's claims that his father was detained and imprisoned in violation of his fair trial rights, and that his father was explicitly targeted for his activities as a human rights defender and journalist.

7.3 The author also claims that his father's trial was not fair, since the trial court did not accept the defence lawyers' request to play the full version of the videotape made at the alleged crime scene nor the request to conduct additional forensic examinations. He further claims that the prosecution did not establish the intent to sell drugs (an offence that his father was not initially charged with) and that the case against his father was an example of persecution against members of the opposition, journalists and human right defenders. The Committee notes that these claims have not been refuted by the State party. The Committee recalls its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, in that the right to equality before courts and tribunals also

⁴ See general comment No. 35 (2014) on liberty and security of person, para. 12.

⁵ Ibid., para. 17, quoting *Zelaya Blanco v. Nicaragua* (CCPR/C/51/D/328/1988), para. 10.3.

ensures equality of arms. This means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant. The Committee notes that in its response, the State party failed to explain why the full length video taken at the alleged crime scene was not shown, why the additional forensic examinations were rejected, why the initial charges were changed and how they were established, and why the author's father was finally convicted of illegal possession of narcotic substances with intent to sell.

7.4 The Committee also notes that the State party has seized journalistic materials and questioned the author's father about his work as a journalist and as a human rights activist, and that the State party has failed to justify such interference with his freedom of expression. In the absence of further explanations by the State party, the Committee considers therefore that the author has established that his father was arrested, detained, tried and convicted because of his journalistic and human rights work,⁶ and that the actions of the authorities of the State party were aimed at intimidating and silencing him.

7.5 In the circumstances as described by the author, and in the absence of relevant explanations from the State party, the Committee concludes that the State party violated the rights of the author's father under articles 9 (1) and 14 (1) of the Covenant.

7.6 The Committee notes the author's allegations that his father's freedom of expression was restricted arbitrarily because the authorities, while conducting a drug investigation, seized his journalistic printed, audio and video materials, and questioned him about his work as a journalist and as a human rights activist. The State party in its submission does not deny or confirm that the seizure of journalistic materials and subsequent interrogations were related to his father's work as a journalist and human rights activist. In the Committee's opinion, the actions of the authorities, irrespective of their legal qualification, amount to a limitation of the rights of the author's father, in particular the right to impart information and ideas of any kind, under article 19 (2) of the Covenant.

7.7 The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, according to which freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. Such freedoms are essential for any society and constitute the foundation stone for every free and democratic society (para. 2). The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only as provided by law and necessary: (a) for the respect of the rights and reputation of others; and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.⁷ The Committee also recalls that it is up to the State party to demonstrate that the restrictions on the rights under article 19 are necessary and proportionate.⁸ The Committee notes that neither the State party nor the national courts provided any explanations for the seizure by the police of the materials related to the journalistic activities of the author's father. The Committee considers that, in the circumstances, the prohibitions imposed on the author's father were not justified by the State party pursuant to the conditions set out in article 19 (3) of the Covenant. It therefore concludes that the rights of the author's father under article 19 (2) of the Covenant have been violated.

7.8 Having found a violation of articles 9 (1), 14 (1) and 19 (2) of the Covenant, the Committee will not examine separately the author's remaining claims under articles 9 (4) and 14 (2) and (5) of the Covenant.

⁶ *Yakubova v. Uzbekistan* (CCPR/C/122/D/2577/2015), para. 9.3.

⁷ General comment No. 34, para. 22.

⁸ See, for example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5; and *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

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 Salijon Abdurakhmanov's rights under articles 9 (1), 14 (1) and 19 (2) of the Covenant.

9. Pursuant to 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 reimburse any legal expenses incurred by the author and his father, to provide adequate compensation for the violations suffered and to return any and all confiscated journalistic materials. The State party is also under an obligation to take steps to prevent similar violations in 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 disseminate them widely in the official language of the State party.
