Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2577/2015*

Communication submitted by: Ozoda Yakubova (represented by counsel, Patrick Griffith, Freedom Now)
Alleged victim: Azamjon Formonov
State party: Uzbekistan
Dates of communication: 3 September 2014 (initial submission)
Document references: Special Rapporteur’s rule 97 decision, transmitted to the State party on 2 March 2015 (not issued in document form)
Date of adoption of Views: 6 April 2018
Subject matter: Arbitrary detention, torture and unfair trial of a human rights activist
Procedural issues: 2, 5 (2) (b)
Substantive issues: Arbitrary detention, torture, fair trial, right to counsel of his own choosing, right to have adequate time and facilities for the preparation of a criminal defence, right not to confess guilt, unlawful interference with privacy, family and home, freedom of expression

* Adopted by the Committee at its 122nd session (12 March-6 April 2018).
** The following members of the Committee participated in the examination of the present communication: Yadhe Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelic, Bamaria Koita, Marcia Kran, Duncan Laki Muhumuza, Photini Puzartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

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1. The author of the communication is Ozoda Yakubova, an Uzbek national born in 1979, who files the complaint on behalf of her husband, Azamjon Formonov, an Uzbek national born in 1978. The author is represented by counsel, Patrick Griffith of Freedom Now. Formonov was being detained at Jaslyk Prison at the time of the submission. The author asserts that Formonov is a victim of violations of articles 7 read alone and in conjunction with article 2(2); 9(1); 14(1)(2) and (3)(b), (e) and (g); 17; and 19(2) of the Covenant. The Optional Protocol entered into force for the State party on 28 September 1995.

The facts as submitted by the author

2.1 The author’s husband is a well-known human rights activist, the chair of the Syrdarya regional branch of the Human Rights Society of Uzbekistan, where he monitored trials and produced human rights pamphlets. On 29 April 2006, police arbitrarily arrested him on charges of extortion, then searched his home without a warrant at 10 a.m., and at 2:30 p.m. When they returned a third time, at 4 p.m., the police knocked Formonov’s pregnant wife, unconscious. She had to be hospitalized overnight. The police seized all human rights materials found in the apartment, as well as Formonov’s computer and printer. Formonov was held incommunicado for a week after his arrest and tortured, including suffocation and beatings, in order to elicit a false confession. He was later permitted access to a lawyer, but the latter failed to act independently and effectively to defend his client’s interests.

2.2 On 15 June 2006, without presenting any evidence at trial or providing Formonov the opportunity to be represented by a counsel of his choice, a judge found Formonov guilty and sentenced him to nine years in a general-condition prison. Contrary to this sentence, the State party has held Formonov in Jaslyk—a strict-regime prison which is the worst in the country. Many international human rights monitoring bodies and organizations, including the UN Committee against Torture (CAT), the UN Working Group on Arbitrary Detention, Human Rights Watch and Amnesty International, have expressed their concern over his treatment as Formonov has been repeatedly tortured in Jaslyk. From 23 May to 19 June 2007, he was incarcerated in an isolation cell and his legs and feet were beaten so severely that he was unable to walk for 10 days. From 10 October to 20 October 2007, he was accused of “failing to walk straight in line,” and placed in an unheated isolation cell for 10 days, where he was handcuffed and beaten by prison officials. Because the temperature was below freezing, he fell ill with symptoms that lasted for months. The authorities repeatedly beat him to coerce him into signing various statements. In 2008, he was beaten until he signed a statement admitting to breaking prison rules. In 2011, to force Formonov to sign a document stating that he was not being tortured, was in perfect health, detained under good conditions and with access to medical care, prison authorities beat Formonov severely on his head, back and stomach for an hour. While being strangled, Formonov states that Officer S. V. threatened to kill him, whoever visited him, and his wife, and to imprison his children.

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1 Power of Attorney signed by the author provided.
2 He was released on 3 October 2017.
2.3 Red Cross representatives could not meet Formonov at Jaslyk, because during their visits, he was transferred to another prison in Nukus. The CAT has expressed particular concern that Formonov has allegedly been subjected to torture while being arbitrarily detained and imprisoned.

2.4 Formonov filed several appellate complaints over the judgment of the first instance court of 15 June 2006. According to the Syrdarya Prosecutor’s Office, the Syrdarya Regional Court considered the appeal, but left the decision unchanged. The document issued by the Office acknowledged the appellate decision but did not give an exact date of the decision. Despite numerous attempts to obtain a copy, the Court has not issued the author with a copy of the appellate court’s decision. Formonov’s father-in-law, “sent complaints” to the Syrdarya Regional Court, to the Syrdarya State Prosecutor’s Office, and to the Supreme Court, concerning the violations of Formonov’s rights to a fair trial and torture, but did not receive a response to any of these complaints. The author submitted a complaint to the Ombudsman, and received a one-page response that summarily concluded that there were no legal grounds to bring an appeal under the supervisory procedure. The author sent a complaint to the Prosecutor General’s Office, but this office merely forwarded the complaint to the Syrdarya Region Prosecutor’s Office, which was responsible for the criminal prosecution that violated Formonov’s right to a fair trial. On 4 September 2009, the Prosecutor’s Office dismissed the complaint without providing any reasoning and stated that any additional applications on the same subject matter would be “left without consideration”. The author also submitted a complaint to the Deputy Minister of Internal Affairs, and a letter to President Karimov. On 26 April 2014, Formonov’s family filed a complaint under the supervisory procedure to the Supreme Court, which remained without response.

2.5 Two cases were brought by or on behalf of Formonov before the Working Group on Arbitrary Detention. WGAD issued an opinion in November 2012 finding that his prosecution and imprisonment was a Category II violation of his right to freedom of expression under article 19 of the Covenant and directed the State party to provide Formonov with a new trial.

The complaint

3.1 The author claims that her husband is a victim of violations by Uzbekistan of articles 7, read alone and in conjunction with article 2(2), 9(1), 14(1), (2) and (3)(b), (e) and (g), 17 and 19(2) of the Covenant.

3.2 The author maintains that in violation of article 7 of the Covenant, Formonov was subjected to incommunicado detention for a week after his arrest; suffocated by being forced to wear a gas-mask with closed air-vents, repeatedly and severely beaten, held in isolation, stripped of his clothing, handcuffed and held in an unheated prison cell for 23 days despite temperatures below freezing. The author also asserts a violation of article 7, read in conjunction with article 2(2), because the State party failed to establish safeguards against torture, to prevent Formonov from being held incommunicado, to provide him with access to an independent lawyer and to his family, to ensure that places of detention are free from any equipment that could be used to inflict torture, to allow independent monitoring of detention facilities, and to properly investigate instances of torture and provide an effective remedy.

3.3 Concerning article 9(1) of the Covenant, the author asserts that the true motive of the government in arresting, detaining and incarcerating Formonov is to persecute him for his

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3 CAT/C/UZB/CO/4, para.8.
human rights work and to silence him. The author maintains that Formonov’s arrest and detention is therefore arbitrary.

3.4 The author maintains that the pre-trial investigation and trial were conducted with egregious violations of article 14 of the Covenant:

a) Formonov’s confession was extracted by torture;

b) he was held incommunicado and was denied the right to communicate with any counsel. Eventually, he was allowed to communicate with a lawyer appointed by, and acting under the influence of, the government, who was present when the authorities interrogated and tortured Formonov in order to force him to sign a false confession. Formonov declined his services, and was forced to rely on his father-in-law, Yakubov, who has no legal training, to handle his legal defense. However, the court first impeded Yakubov’s ability to prepare a defense, and then removed him as counsel without notice moments before the trial began. Judge K. attempted several times to limit Yakubov’s access to prosecutorial documents. Yakubov and Formonov were never granted access to certain court documents, including the decision of the appellate court;

c) Formonov was held in an iron cage during his trial, which violates article 14(2) of the Covenant;

d) No witnesses were questioned in the presence of Formonov or his representative during the only hearing, which lasted less than 30 minutes and was ‘‘composed solely by’’ Judge K., who read the judgment and sentence;

e) Formonov’s trial was not impartial because the presiding Judge was the same judge that Formonov had criticized in his pamphlets.

3.5 Regarding article 17 of the Covenant, the author maintains that Formonov’s right against unlawful interferences with his privacy, family and home was breached when the authorities carried out searches of his apartment without a properly-issued warrant and seized his property.

3.6 Regarding article 19(2) of the Covenant, the author maintains that “the true motive of the Uzbek government in arresting, detaining and incarcerating Formonov was to persecute him for his human rights work and to silence him.” Formonov monitored and documented human rights violations perpetrated by the authorities in pamphlets which were distributed to human rights organizations and foreign embassies. These pamphlets had no probative value to the unrelated and unfounded charge of extortion; which was a breach of freedom of expression.

State party’s observations on admissibility and the merits

4.1. The State party submitted observations on 25 October 2016, affirming that the arguments set forth in the communication have been thoroughly examined and have not been confirmed, due to the absence of facts confirming that the law enforcement agencies committed acts breaching articles 7, 9, 14, 17, 19 (2) of the Covenant. Formonov was convicted on 15 June 2006 by the Yangiyer criminal court under article 165 of the Criminal Code, to 9 years imprisonment in a general-regime prison. On 18 June 2006, the Syrdarya Regional Court examined the case and upheld the verdict.

4.2 The court found him guilty on the following grounds: on 12 April 2006, Formonov, calling himself a representative of the Human Rights Society of Syrdarya region, with the intention of seizing the property of another citizen through extortion, together with two farmer leaders, wrote a report to the head of the unitary oil enterprise, in which it was stated that the distribution agent of the Dashtabad branch of the enterprise U.M., did not deliver petroleum products in a timely manner to the farmers, and on occasion did not supply a full measure of fuel. They requested that measures be taken against the responsible parties.

4.3 An enterprise commission investigated yet found no confirmation of these allegations. Formonov entered into a criminal association with his acquaintance A.K., and on 28 April 2006 met the Dashtabad branch distribution agent U.M. in Yangiyer. He threatened that the letter describing the irregularities in the delivery of petroleum products would be made public on the internet and would result in the agent dismissal. To stop him from taking action, he demanded that U.M. give him 600 000 Sum.

4.4 On 29 April 2006, at approximately 7.30am Formonov and A.K. were arrested, while receiving from U.M. 250 USD and 200 000 Sum through extortion, at the bus stop on Tashkent Street in Gulistan. Later the same day, due to urgent matters arising in the course of the investigation, Formonov’s home was searched, and the supervising prosecutor was informed of this subsequently, in accordance with article 161 of the Criminal Procedure Code. During the search items connected with the conduct of the crime were discovered. Due to the serious nature of the charges, on 1 May 2006 the authorities decided to place Formonov in pre-trial detention. His guilt has been proven by the evidence of the victim, witnesses, reports on searches of the scenes of the incident, charts and photographs, forensic-chemical examination, and other evidence gathered in the investigation and examined in court.

4.5 Formonov’s accusations about his supposed torture, the examination of the case in closed court session and the violation of his right to defence, in his appeal complaint, were examined during the appeal hearing, and were not confirmed.

4.6 During the preliminary investigation, Formonov was defended by lawyers Kholikberdiyev and Nomozov. There is a statement in the case from Formonov, declaring himself guilty under article 168 of the Criminal Code. During the preliminary investigation Formonov did not make any statement about torture being used against him. During the court hearing, while questioned about the conditions of his pre-trial detention and whether any unlawful measures were being taken against him, Formonov did not state that such measures had been taken. The case was heard in open court session with the participation of the lawyer Mamadyryev. Due to Formonov breaching the order, and in accordance with article 272 (2) of the Criminal Procedural Code, he was removed from the court room. At the end of the proceedings, the court granted Formonov the opportunity to participate in the arguments and make a closing statement, which he refused.

4.7 The preliminary investigation and court examination were conducted in accordance with the norms of criminal procedural law. The court’s classification of Formonov’s actions is correct and his punishment proportionate to the committed crime. His sentence is well founded and legal.

4.8 While serving his sentence Formonov has systematically broken the penitentiary rules, has refused to complete lawful demands made by the prison administration, and has been a malicious rule-breaker – for which he has received 20 disciplinary punishments. On 3 April, the prosecutor of Kungrad district of the Republic of Karakalpakstan, opened

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6 Equivalent of 491 USD at that time.
7 Equivalent of 163 USD at that time.
a criminal case against Formonov under article 221(2)(b) “Disobeying Legal Demands of the Administration of a Correctional Facility” of the Criminal Code. On 1 May 2015, Formonov was convicted by the Kungrad district court of the Republic of Karakalpakstan under articles 221 and 60 of the Criminal Code, to 5 years and 26 days imprisonment. When deciding on the nature and length of sentence, the court took into account all mitigating and aggravating factors. The measures taken did not breach the norms and regulations of national legislation or international standards. While serving his sentence, Formonov did not improve his behaviour, but continued to break the prison rules and internal order. On 2 May and on 5 June 2016, he was subject to disciplinary reprimands, yet he was not held in isolation as a disciplinary measure.

4.9 Formonov has been cared for by the prison medical staff for general reasons – he is healthy and fit to work. Medical staff assessed his state of health as satisfactory, with no need for medical treatment. The prison administration has not permitted the conduct of any acts contravening his rights. He has not been subjected to physical or psychological pressure and has not addressed the prison administration with any complaint.

4.10 In 2015-2016, Formonov was granted six meetings with relatives. Neither lawyers requested meetings with him, nor did he make any request to the prison administration for meetings with his counsels.

4.11 The accusation of torture by police officers during his arrest and trial are unsubstantiated, presented without any concrete details and not confirmed by any arguments or facts. It aims to blacken the actions and present a negative image of the law enforcement officers.

4.12 The human rights violations in the penitentiary system described in the communication, ‘did not take place and could not take place’. In the correctional system, particular attention is paid to human rights, to observance of legality and prevention of human rights violations in penitentiary institutions.

Author’s comments on the State party’s observations

5.1 In his comments of 17 January 2017, the author challenges the State party’s narrative of Formonov’s arrest, trial, and detention as inadequately addressing the allegations submitted to the Committee. The State party’s response reiterates the false position that Formonov was arrested in accordance with due process, detained and convicted of extortion. The author argues that Formonov’s alleged violations of the terms of his detention and the resulting conviction and additional sentence were merely a pretext to extend his original sentence, being both wildly disproportionate to his alleged infractions and the result of a hearing which violated his rights to a fair trial. The State party inaccurately claims that there have been no continuing violations of Formonov’s rights as a detainee to access his attorney or to be free from torture or abusive treatment.

5.2 The State party fails to address the allegations that Formonov was targeted in order to prevent his human rights activism and restrict his freedom of expression and that his detention was arbitrary as it was a response to his exercise of a fundamental right. The State party fails to confront, or even deny, its documented practice of persecuting human rights defenders by imprisoning them on fabricated extortion charges, nor does it acknowledge that the police seized human rights materials from Formonov’s home.

8 On 18.01.2015; 01.07.2015; 08.11.2015; 11.03.2016; 11.07.2016; 18.08.2016.
5.3 The author maintains that the evidence used was fabricated and that his confession was obtained under torture. The chemical powder used to mark money for extortion was applied to Formonov by the police after he was in custody.

5.4 The fact that Formonov was “arrested, having received from U. M. 250 US Dollars and 200 thousand Sum through extortion, at the bus stop on Tashkent Street in Gulistan” is incorrect. This statement fails to explain the conflicting narrative set forth in the court’s decision, which variously describes Formonov having been caught “in flagrante delicto” as he received the money and as having been caught when the bribe money was recovered from inside his computer during a subsequent search of his apartment.

5.5 The search was performed without a valid warrant and with extraordinary brutality. Police attempted to search Formonov’s house twice without a warrant; finally on their third attempt the officers presented an incomplete warrant, lacking the signature of an authorizing official or the seal of the Prosecutor’s Office. The officers beat the author who was pregnant so badly that she was knocked unconscious and required overnight hospitalization.

5.6 Although the State party states that police discovered unspecified “items connected with the conduct of the crime”, in fact the officers seized items connected with Formonov’s human rights work: a computer and a copy machine used to produce human rights pamphlets, human rights literature, including pamphlets documenting torture and other human rights abuses of the authorities. Such documentation would have been irrelevant to a legitimate extortion charge.

5.7 The author challenges the State party’s assertion that Formonov was not placed in pre-trial detention until 1 May 2006, claiming that Formonov was held incommunicado in pre-trial detention for over a week, starting from his arrest on 29 April 2006.

5.8 Although the judgment references the testimony of seven witnesses, no witnesses were questioned in the presence of Formonov or his representative and there was no opportunity to examine any testimony. Formonov was represented by state-appointed counsel instead of his chosen representative and it is unlikely that any evidence presented at trial would have been subjected to a rigorous cross-examination. The trial, during which all of this evidence was allegedly presented, lasted less than a half hour and comprised solely of Judge K. reading the judgment and the sentence. Given the fabricated nature of evidence, the lack of cross-examination by him or his chosen representative and abbreviated time period of the trial in which such evidence was to have been heard, the State party’s contention that Formonov’s guilt was proved by evidence is false.

5.9 The author notes that the appeals trial was not open to the public or to Formonov’s family, so it is not clear what occurred behind closed doors. Formonov’s family has been unable to obtain a copy of the appeals decision, despite a request to the regional court. Thus the State party cannot rely on an assertion that the appeals court appropriately examined and dismissed Formonov’s complaints if it keeps the records of such proceeding secret.

5.10 Khokhberdiyev and Mamadaliev were not attorneys of Formonov’s choosing. Khokhberdiyev was a court-appointed attorney whose selection had been terminated by Formonov’s family because Khokhberdiyev was present during the torture and refused to submit any complaints regarding such torture. In contravention of Formonov’s express wishes, the court reappointed Khokhberdiyev to represent him during the trial. Mamadaliev was also a court-appointed attorney known to be under the influence of the Government. Formonov’s chosen representative was removed from the case by the court on the day that the trial took place, allegedly so that he could be called as a witness. However, during the trial which took place moments after his removal, Yakubov was not called to testify, thus illustrating that the court had replaced him without legitimate reason.
5.11 Formonov’s confession obtained through torture points not to the guilt of the accused but to the violation of international law by the authorities conducting the interrogation. He had no opportunity to complain about the torture at any time prior to his conviction, but Yakubov and the author submitted complaints. Formonov was initially held *incommunicado* before he had access to a court-appointed attorney, who sanctioned the use of torture to obtain a confession by being present during such torture and refusing to file a complaint regarding this abuse. Formonov told Yakubov about the torture suffered. However, Yakubov was removed as representative prior to the trial and so was not given an opportunity to raise this issue before the court. Formonov himself was removed from the courtroom for at least part of the proceedings and was not permitted to cross-examine any evidence, again denying him the ability to complain as to how this evidence was collected.

5.12 The court hearing was closed to the public, Formonov’s family, supporters and chosen representative. As the State party has admitted, even Formonov was not permitted to attend parts of his own trial, because he was removed after allegedly “breaching order.” His court-appointed attorneys known to be under Government influence were present.

5.13 The State party fails to respond to the specific allegations regarding the violations of Formonov’s rights under Article 14 of the Covenant: not to be compelled to confess guilt by obtaining a confession through torture; to have adequate time and facilities to prepare a defense and to communicate with counsel of his own choosing by holding Formonov *incommunicado* for the week following his arrest, impeding access by Formonov’s chosen representative to prosecutorial documents and removing the chosen representative in favor of court-appointed lawyers who provided unprofessional and unethical legal advice; to cross-examine witnesses by holding an abridged trial of less than 30 minutes, without any evidence or witnesses presented; to a fair and public hearing by an impartial tribunal by holding a closed trial wherein the presiding judge had been previously criticized by Formonov in his human rights pamphlets; and to a presumption of innocence by presenting him to the court in a cage.

5.14 Formonov’s torture was described in detail, including information on how he was tortured, who was present and statements made during the torture; post-conviction torture was also well-detailed, including placement in isolation cells, continual beatings that left Formonov unable to walk for over a week, his placement in unheated cells where the sub-freezing temperatures left him ill, his strangling by prison authorities, and threats of imprisonment of his children. In suggesting that torture allegations were made in order to “[blacken] the image of the actions of the internal affairs agencies, and [paint] a negative image of their officers”, without investigating such allegations, the State party ignores not only the specific and detailed accusations, but also the pattern of “wide-spread and ungrounded torture in Uzbekistan’s criminal justice system,” particularly against human rights defenders, as has been confirmed by, *inter alia*, CAT.\(^8\) Such accusation of bad faith also attempts to divert attention from the State party’s actions to actively conceal such torture by denying prison visits to Formonov in order to conceal his torture marks or by removing him from prison during the Red Cross visits.

5.15 Formonov has been beaten in order to sign a statement admitting that he broke prison regulations. The State party’s account of alleged violation of the prison regulations indicates that Formonov’s additional conviction was “in connection” with the 20 disciplinary punishments, however the judgment of the Kungrad court of 1 May 2015 shows that he was only tried for four infractions, which allegedly occurred few months prior to his release date. Formonov denied committing these infractions but confirmed that he was placed in punishment cells for the commission of such infractions. The additional

\(^8\) CAT/C/UZB/CO/4, para.8.
five years sentence is a further violation of Formonov’s rights to a fair trial, free expression and to be free from arbitrary detention. The court did not allow Formonov to communicate with counsel of his own choosing, nor was he permitted the assistance of counsel during the hearing. The court solely relied on witness statements of prison guards and did not permit Formonov to cross-examine such witnesses. Although the sentencing judgment states that the hearing was “open”, neither Formonov’s counsel, nor his family members were informed of the hearing and were therefore prevented from attending.

5.16 Despite serious violations of criminal procedure code and international standards of due process, the Kungrad court concluded that the witness statements were reliable and admissible and that Formonov’s guilt had been fully proved. However, even if Formonov had been afforded due process and were still found to have made offensive statements, the five year sentence is wildly disproportionate to the severity of his “crimes,” as was his placement into an isolation cell for extended periods of time for such offenses. Taken at their worst, Formonov’s alleged crimes amount to merely an administrative infraction of failing to wear proper identification and insults which do not incite violence. Once again Formonov has been sentenced to extended imprisonment on the basis of his exercise of a fundamental right which, coupled with the due process violations, has ensured that he will continue to be a victim of arbitrary detention for an additional five years.10

5.17 Formonov has suffered numerous post-conviction violations of his rights, related to denial of visitation from his attorneys, being held in solitary confinement and torture. His attorneys have twice been prevented from visiting their client. On 1 March 2016, attorney Parpieva went to the prison to visit him, but was denied entry. On 1 May 2016, attorney Murdiev was also denied access.

5.18 From 23 May to 19 June 2007 and from 10 October to 20 October 2007, Formonov was incarcerated in an unheated isolation cell. He has since been held in an isolation cell on various occasions: on 24 January, 17 February and 9 March 2015, he was placed in an isolation cell respectively for five, ten and twenty days for allegedly insulting inmates. In 2007, his legs and feet were beaten so severely that he was unable to walk for ten days. In 2008, he was beaten until he agreed to sign a statement that he had violated prison regulations. In 2011, he was strangled and beaten until he agreed to sign a statement that he was being held in good conditions and with access to medical treatment. Such beatings were also accompanied by verbal threats against his family. The State party has also attempted to hide its treatment of Formonov by preventing family visitation while he bore marks of torture or by removing him from the prison whenever the Red Cross would visit. In February 2012, he conducted a hunger strike to protest his torture and the denial of family visits.

State party’s additional observations

6.1 On 13 April 2017, the State party reiterated its previous observations. It challenges the author’s assertion that evidence used to convict Formonov was fabricated and his confession was obtained under physical duress by reiterating a detailed narrative of the crime and arrest. It explains that Formonov received money from U. M. at a bus stop around 7am, before fleeing the scene upon the police arrival. After fleeing by walking through a provincial hospital and then taking a public minibus home, Formonov then drove back to the crime scene, where he was apprehended as a suspect. The conversation of 28 April 2006 between Formonov and U.M. was recorded and the transcript evidenced that Formonov requested 600,000 Sum: 500,000 in order to convince his organisation leadership

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10 At the time of the submission, Formonov was appealing this additional conviction through the domestic courts. No further information on file.
not to publish compromising facts against U.M. and 100,000 for himself. Chemical powder used to mark the money for extortion was found on Formonov's hands, face and hair. His co-accused A.K. confessed his guilt admitting that they received money from U.M.

6.2 The State party submits that no search warrant was needed under article 161 of the Criminal Procedure Code because the search was ordered by the investigator and conducted under exigent circumstances. Furthermore, the State party states that it has not recorded evidence in the criminal case file and that there are no corroborating materials that the author was struck and hospitalized. In response to the allegation that the materials seized were irrelevant to Formonov's crime of extortion, the State party argues that, no human rights literature was seized and because he used his office equipment to commit the crime, the confiscation of such equipment was relevant to the investigation. On 1 May 2006, Formonov was detained as accused. On 18 May the pre-trial investigation was completed and the case sent to the Yangier district court.

6.3 The State party gives a narrative of the trial and contends that Formonov's guilt was evidenced by a confession freely given in the presence of his attorney Kholikberdiev at the pre-trial phase. His attorney Nomozov explored changing the legal basis of Formonov's crime. Yakubov, Formonov's chosen representative, had ample time to prepare for the criminal case. He was allowed to study the case file for 3 hours on 8 June and for 8.5 hours on 9 June 2006. On 12 June 2006, he requested additional time to study the case. The hearing was adjourned to the next day and Yakubov invited over the phone to continue to study the documents yet he refused. He was removed from the case due to his refusal to follow the judge's instructions. Formonov was removed for some duration of his trial because he refused to follow the judge's instructions, instead turning his back to the court and remaining silent. He refused to participate in the debates and to make a final statement. Furthermore, neither Formonov, nor his relatives did request to attend the appeals trial while his attorney Mamadaliev was present. Formonov's fair trial complaints stemming from the trial of first instance were examined and discarded by the appeals court. He received a copy of the decision of the appeals court against a written acknowledgment.\textsuperscript{11}

6.4 The state-appointed lawyers Kholikberdiev and Mamadaliev were not under Government influence. As evidence that no physical or psychological pressure was used, the State party points out that counsel Nomozov was present during Formonov's confessions. There were no restrictions on Formonov during the investigation stage in bringing a complaint about the alleged torture. He was able to file a petition requesting that be released on bail and to produce a confession statement on 11 May 2006 requesting a change in the legal basis of his crime to article 168 (swindling).

6.5 His guilt was established by all the collected evidence. His testimony contradicted the co-accused and the victim's testimonies, and the transcript of the recorded conversation between them. If Formonov were subjected to torture then his testimony would not contradict the rest of the evidence, moreover, his last confession were made in the presence of counsel Nomozov.\textsuperscript{12}

6.6 The case was heard in an open court session, stating that Formonov's representatives were permitted to attend the hearings and the trial was open. This is confirmed by Yakubov's complaints where it is stated that in the courtroom were many bystanders; moreover, Formonov had not previously criticized the presiding judge in his pamphlets.

\textsuperscript{11} The State party has not provided documents in support.
\textsuperscript{12} Contested by the author – Formonov made his confession under duress in the presence of counsel Kholikberdiev.
The State party explains that, pursuant to the domestic law, Formonov was presented to the court in a cage for his own security and the security of others.

6.7 The torture accusations were made in order to discredit investigation and law-enforcement agencies; and this smear campaign is evidenced by the fact that Formonov did not raise any torture allegations prior to his meeting with Yakubov and his relatives. Lastly, his additional sentence was due to him violating internal prison regulations; he was offered a counsel, but chose to be unrepresented. Formonov was never placed in solitary confinement on account of these infractions; in the prison where he was serving his sentence cells accommodate 10-12 inmates and there are no solitary confinement cells.

6.8 On 31 October 2017, the State party reiterated once again its main arguments denying all allegations of violations of Formonov’s rights under the Covenant.

Author’s additional comments

7.1 On 19 June 2017, the author challenges the new inconsistencies in the State party’s narrative, the legal assertions that do not comply with due process standards under international law, and the lack of response to crucial allegations in the communication. The State party’s narrative of the arrest set forth in its additional submission conflicts with the narrative in the first observations; does not directly respond to the allegations that evidence was fabricated by the police; and remains unconvincing in its assertion that Formonov was not tortured to procure a confession.

7.2 The State party continues to refer to dubious or secret evidence, alleging that Formonov was recorded threatening U.M., however neither any recording itself nor a transcript of such was ever provided to the defense or made publicly available. The State party does not directly respond to the author’s allegation that, in fact, the police applied the chemical powder to Formonov’s fingers, hair and eyebrows after he was arrested.

7.3 While the State party admits that the search was conducted without a warrant, it suggests that no such warrant was needed under article 161 of the Criminal Procedure Code because the search was conducted under exigent circumstances, without explaining what such exigent circumstances were to justify a warrantless search. It does not explain either why the police needed to seize all of the human rights literature in the home, and why the authorities failed to produce a list of all items taken from the apartment. The materials confiscated were related to Formonov’s human rights work and not to his alleged crime.

7.4 The State party erroneously asserts that 11.5 hours of access to documents, provided to Yakubov less than a week before the trial took place, constituted adequate time and facilities to prepare a defense. Yakubov was banned from representing Formonov at the request of Senior Investigator K., who claimed that Yakubov was likely to be called to testify about the content of a tape recording between Formonov and U.M. and thus could not act as witness and representative. This tape recording was never produced and Yakubov was never called to testify. Formonov was not given the opportunity to name a replacement attorney of his choice; but forced to continue with the assistance of two state-appointed attorneys. He was not present to witness or cross-examine any of the testimony or evidence given against him. The State party does not provide a convincing explanation for why he was removed from the trial. Formonov’s act of dissent was not to be loudly disruptive to the court’s proceedings, but rather to remain silent and turn his back to the judge; it would be difficult to conclude that a silent defendant is so disruptive as to require his removal from the courtroom.
Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 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.

8.3 The Committee notes the author’s claim that the police interfered arbitrarily with Formonov’s privacy, family, home and correspondence by raiding their home on several occasions without a warrant; by seizing all human rights literature, unrelated to the extortion charges; and by knocking out unconscious the author who had to be hospitalized overnight. However, the material in the file does not allow the Committee to ascertain that these claims have been raised before the domestic courts. Accordingly, the Committee finds the claims under article 17 inadmissible for non-exhaustion of domestic remedies.

8.4 The Committee notes the author’s claim that she 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 for the remainder of the claims.

8.5 The Committee notes the author’s submission that the State party has violated its obligations under article 2(2) of the Covenant, read in conjunction with article 7, since it failed to adopt such laws or other measures as may be necessary to give effect to the rights recognized in article 7 of the Covenant. The Committee recalls its jurisprudence\(^1\) that the provisions of article 2 cannot be invoked as a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim. The Committee notes in this regard that the author claims a violation of article 2(2) in conjunction with article 7 because the State party failed to take effective positive measures to prevent torture, to protect Formonov from torture and to properly investigate instances of torture and provide an effective remedy (para. 3.2). The Committee considers, however, that the author has failed to provide sufficient information to substantiate these claims for purposes of admissibility, in a manner that would render them distinct from the claims that she has advanced under article 7. The Committee therefore declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.6 The Committee notes the author’s claims that her husband was arrested, prosecuted and sentenced on account of his human rights work, that the searches in his home were not properly authorized, that he was tortured and evidence manufactured, that his trial was marred by violations of his due process rights. The Committee considers that the author’s claims also raise issues under article 14 (3) (d) of the Covenant. In the Committee’s view, the author has sufficiently substantiated, for the purposes of admissibility, her claims under articles 7, read alone and in conjunction with 2(3), 9 (1), 14 (1), (2), (3) (b), (d), (e), (g), and 19(2) of the Covenant and therefore proceeds with its consideration of the merits.

\(^1\) See communication No. 2030/2011, Poltakov v. Belarus, paragraph 7.4
Consideration of the merits

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

9.2 The author has claimed that the State party violated article 7, alone and in conjunction with article 2(3) of the Covenant, as her husband, a human rights defender, who monitored trials and wrote pamphlets on human rights issues, was subjected to incommunicado detention for over one week after his arrest during which he was tortured; that after his conviction he was repeatedly and severely beaten, held in isolation, and stripped of his clothing, handcuffed and held in an unheated prison cell for 23 days despite temperatures below freezing. In this connection, the Committee notes the State party’s submission that neither Formonov, nor his lawyers initially complained about his alleged torture and that his accusations about torture in his appeal complaint, were examined in the course of the appeal hearing, and were not found to be confirmed by the appeals court. The Committee, however, notes that the author and her husband’s chosen counsel Yakubov lodged several complaints to no avail; that she has presented the instances of torture in great detail, including information on how her husband was tortured, who was present during such torture and certain statements made during such torture. Formonov’s post-conviction torture was also well-detailed, including his placement in isolation cells, continual beatings that left him unable to walk for over a week, his placement in unheated cells where the sub-freezing temperatures left him ill, his strangling by prison authorities, and threats of imprisonment of his children. The Committee further notes the author’s assertion that the small number of family meetings with Formonov was to conceal evidence of his torture. The Committee notes that the State party has provided no documentary evidence of any specific inquiry into the numerous allegations of ill-treatment. The Committee further notes the State party has not provided any explanation as to the reasons for which Formonov has been transferred to other prison facilities during Red Cross visits in Jasluk. The Committee considers that in the circumstances, the State party has failed to demonstrate in a satisfactory manner how its authorities adequately addressed the allegations of torture and ill-treatment made by the authors in any meaningful way. It recalls that the burden of proof in regard to torture or ill-treatment cannot rest alone on the author of a communication, especially in view of the fact that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information. The State party has the duty to conduct a prompt, effective and independent investigation of all credible allegations of violations of article 7 of the Covenant. In these circumstances, the Committee considers that due weight must be given to the authors’ allegations of torture and ill-treatment. Accordingly, the Committee concludes that the facts as presented by the author reveal a violation of Formonov’s rights under article 7, alone and in conjunction with article 2(3) of the Covenant.

9.3 Regarding the author’s claims that Formonov was arbitrarily detained as a result of his human rights activities, in violation of his rights under articles 9(1) and 19(2), the Committee notes the author’s submission that Formonov was the chair of a human rights organization’s regional branch, that he monitored trials and wrote human rights pamphlets. It further notes the State party’s contention that he was arrested on charges of extortion. In this regard, the Committee recalls its jurisprudence that the protection against arbitrary detention is to be applied broadly and that the “arbitrariness” is not to be equated with “against the law”, but “must be interpreted more broadly to include elements of

14 See General Comment No. 31, para. 15.
15 See General Comment No. 20, para. 14.
inappropriateness, injustice, lack of predictability and due process of law". 16 The Committee also recalls that an "arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19)." 17 The Committee notes the author's claims that the arrest aimed at intimidating and silencing Formonov, targeting his activities as a human rights defender. It also notes the author's information that his photocopy and all human rights literature and pamphlets were seized during the search, and the State party's failure to explain how the confiscated human rights material could be related to the extortion charges. The Committee considers therefore that the author has established that Formonov was arrested and detained for his human rights work. In the circumstances described by the author, and in the absence of the State party's explanations regarding these elements of the communication, the Committee considers that there has been a violation of Formonov's rights under articles 9(1) and 19 of the Covenant.

9.4 Regarding article 14 of the Covenant, the Committee notes the author's claim that Formonov was kept in a metal cage during the court hearing. The Committee further notes that the State party has accepted this as a fact. The Committee recalls that defendants should not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. 18 On the basis of the information before it, the Committee concludes that keeping Formonov in a cage constitutes a violation of his right to be presumed innocent until proved guilty under article 14(2) of the Covenant.

9.5 The Committee notes the author's claims that throughout most of the trial her husband had no access to counsel of his own choosing; his chosen counsel was not given adequate time to prepare the case and neither defense counsel had access to some documents, including the appeal court decision. It further notes the fact, which is undisputed by the State party, that Formonov's chosen counsel, before having been removed from the trial, was given 11.5 hours to access the documents, which were provided less than a week before the trial took place. Accordingly, the Committee finds that the State party has violated Formonov's rights under article 14(3)(b) and (d) of the Covenant.

9.6 The Committee further notes the claim that Formonov's confession under duress to the charge of extortion obtained in the presence of the state-appointed counsel, was accepted as evidence by the trial court. It also notes the State party's statement that the evidence considered by the court was obtained in a lawful way and accepted by the court as admissible, and that the torture allegations raised in Formonov's appeal were reviewed and rejected by the appeals court. In this regard, the Committee notes the author's contention that the appeals court decision was kept secret. It further notes that the State party has not furnished any documentary evidence to support its statement and that there is nothing on file to suggest that either the trial or the appeals court has considered Formonov's claim that he was kept incommunicado when he made his confession under duress, and that he retracted the confession once he talked to his chosen counsel. In this light, the Committee concludes that the author's rights under article 14(3)(g) of the Covenant had been violated.

9.7 Having found a violation of article 14(2) and 14(3)(b), (d) and (g) of the Covenant, the Committee will not examine separately the author's remaining claims under article 14(1) and (3)(e) of the Covenant.

16 See General comment No. 35, para. 12.
18 See General Comment No. 32, para. 30.
10. The Human Rights Committee, acting under article 5(4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of Foromenov’s rights under articles 7, read alone and in conjunction with articles 2(3), 9(1), 14(2) and (3)(b), (d) and (g), and 19(2) of the Covenant.

11. In accordance with article 2(3)(a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to: (a) conduct a thorough and effective investigation into the allegations of torture of the author’s husband and, if confirmed, prosecute, try and punish those responsible; (b) quash the trial court verdicts; and (c) provide adequate compensation to the author’s husband for the violations suffered. The State party is also under an obligation to take all necessary steps to prevent the occurrence of similar violations in the future.

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