

**International Covenant on  
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**Human Rights Committee****Communication No. 2304/2013****Views adopted by the Committee at its 115th session  
(19 October-6 November 2015)**

<i>Submitted by:</i>	Dzhakishev Mukhtar (represented by counsel from Grosvenor Law)
<i>Alleged victim:</i>	Dzhakishev Mukhtar
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	9 July 2013 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 12 November 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	6 November 2015
<i>Subject matter:</i>	The author's illegal detention, condition of detention, and subsequent unfair trial
<i>Procedural issue:</i>	Admissibility (exhaustion of domestic remedies)
<i>Substantive issues:</i>	Torture, pretrial detention, conditions of detention, deprivation of liberty, fair trial
<i>Articles of the Covenant:</i>	6 (1); 7 and 9 (1-5); 10 (1); 14 (1), (2) and (3) (a), (b), (d) and (e)
<i>Articles of the Optional Protocol:</i>	1 and 5 (2) (b)



## Annex

### **Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political rights (115th session)**

concerning

#### **Communication No. 2304/2013\***

*Submitted by:* Dzhakishev Mukhtar (represented by counsel from Grosvenor Law)

*Alleged victim:* Dzhakishev Mukhtar

*State party:* Kazakhstan

*Date of communication:* 9 July 2013 (initial submission)

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

*Meeting on 6 November 2015,*

*Having concluded* its consideration of communication No. 2304/2013, submitted to it by Dzhakishev Mukhtar 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:

#### **Views under article 5 (4) of the Optional Protocol**

1.1 The author of the communication is Dzhakishev Mukhtar, a Kazakh national born on 28 June 1963 who is currently serving a 14-year prison sentence in Kazakhstan after having been convicted for embezzlement, bribery and fraud. The author claims that he is a victim of violations by Kazakhstan of articles 6 (1), 7, 9 (1-5), 10 (1) and 14 (1), (2) and (3) (a), (b), (d) and (e) of the Covenant. The Optional Protocol entered into force for Kazakhstan on 30 September 2009. The author is represented by counsel from Grosvenor Law.

1.2 On 26 March 2014, the Committee, pursuant to rule 92 of its rules of procedure and acting through its Special Rapporteur on new communications and interim measures, requested that the State party take all measures necessary to protect Mr. Dzhakishev's

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\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

health by providing him with the medical care he needed or to allow him access to medical treatment of his choosing, so as to avoid irreparable harm.

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

2.1 In 1998, the author was appointed President of the Kazakhstan National Atomic Company (Kazatomprom), a State-owned uranium production company. In 2001, he was also appointed to the position of Deputy Minister of Energy and Mineral Resources of Kazakhstan. As President of Kazatomprom, he managed several financial and business operations worldwide.

2.2 On 21 May 2009, the author was arrested on the premises of Kazatomprom by officers of the National Security Committee and taken to that entity's pretrial detention centre in Astana. At the centre, the author was detained under article 132 of the Code of Criminal Procedure of Kazakhstan. He was told that he was being detained on suspicion of having committed a criminal offence and that the National Security Committee wanted to interrogate him.

2.3 The author asked whether he could retain a private lawyer. He was told that he could not retain a lawyer of his choice since a State-appointed lawyer, S.P., had already been provided to him. During the first few days of detention, the author was interrogated on several occasions. The State-appointed lawyer was always present but was passive and did not ask any questions. Likewise, he did not complain about the author's detention, made no attempt to contact the author's family and did not attend the hearings related to the author's case.<sup>1</sup>

2.4 On 23 May 2009, the author's period of pretrial detention was prolonged for a further two months by the military court of the garrison in the region of Akmola. Given the passivity of the State-appointed lawyer, the author appealed the decision to the military court of Kazakhstan, claiming that his arrest was unlawful because the Akmola military court lacked jurisdiction.<sup>2</sup> On 29 May 2009, the military court of Kazakhstan examined the author's appeal; the examination took place in the author's absence. The court upheld the decision to detain him.

2.5 On 26 May 2009, the author's wife, J., and a private lawyer retained by the family, D.K., filed a request to the National Security Committee asking that D.K. be considered Mr. Dzhakishev's counsel of record. The request was denied that same day on the grounds that the investigation involved classified information and D.K. had no security clearance and therefore could not have access to "State secrets". On 27 May 2009, an appeal against that decision was made to the Prosecutor's Office in Astana. The complaint was forwarded to the Prosecutor General's Office of Kazakhstan.

2.6 On 3 June 2009, the Prosecutor General's Office rejected the complaint submitted by the author's wife on 27 May 2009. On 16 June 2009, the author complained to Astana District Court No. 2 about the Prosecutor General's decision of 3 June 2009. On 2 July 2009, the District Court rejected the complaint, referring to the "classified" status of the case. On the same day, the author appealed against that ruling to Astana City Court. On 10 July 2009, that court too rejected his appeal.

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<sup>1</sup> It is not clear to which hearings the author refers.

<sup>2</sup> The author submits that, according to article 293 of the Code of Criminal Procedure, the military courts have limited jurisdiction over cases involving crimes that are military offences, offences that are committed by military personnel and offences that are committed by individuals in the performance of their official duties, as well as in cases of espionage.

2.7 At some point, a second private lawyer, B., was hired to represent the author. This lawyer's petition to the National Security Committee to admit him as a defence lawyer was also rejected, on 28 May 2009, because the case under investigation was classified as top secret and the lawyer required a duly issued security clearance. Only later were the author's own lawyers, in particular B., allowed to participate in some parts of the proceedings.<sup>3</sup>

2.8 On 11 July 2009, the Akmola military court extended the author's detention until 21 August 2009. During that period, the author's private lawyers, D.K. and B., were harassed by the Kazakh authorities. The National Security Committee complained to their respective bar associations, asking that the lawyers' licences to practice law be withdrawn. Both complaints were rejected by the bar associations.

2.9 On 11 August 2009, the author was formally charged with fraud relating to the uranium deposits of Kazakhstan, embezzlement of Kazatomprom funds and receipt of bribes.<sup>4</sup> The author submits that he did not have access to case materials<sup>5</sup> and that he could not hold confidential meetings with his private lawyer, B., despite the latter's requests for such meetings. In addition, B. had prepared the author's position on the charges, to be submitted as part of the criminal case file, but the lawyer's request was rejected. Furthermore, both of the author's lawyers were prohibited from bringing documents relevant to the case to the pretrial detention centre.

2.10 On 14 August 2009, the National Security Committee informed the author that the preliminary investigation had been completed. Contrary to the provisions of the Code of Criminal Procedure, the author and his privately retained lawyers were not afforded enough time to prepare for trial. On 3 September 2009, the National Security Committee issued a ruling giving the author and his counsel only until 16 September to study the materials in the case file. The Code of Criminal Procedure sets no such time limit. The author and his private lawyers could not make copies of any documents in the case file, despite having requested to do so.<sup>6</sup> The investigators denied these requests because the documents were "classified".<sup>7</sup>

2.11 From 25 August to 10 September 2009, the author was held incommunicado for 15 days, since the National Security Committee did not allow him to have access to B. and since he was denied meetings with his wife. The author complained about this to the National Security Committee and the Prosecutor General's Office, but his complaints were ignored. On 10 September 2009, he was finally allowed to have a very short meeting with B., but this was not a confidential meeting, contrary to the requirements of article 69 of the Code of Criminal Procedure. On 11, 14 and 16 September 2009, B's request to meet with his client was denied by the National Security Committee.<sup>8</sup>

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<sup>3</sup> The author submits that B. was granted clearance only on 24 September 2009, some four months after the author had been arrested.

<sup>4</sup> The alleged crimes as proscribed by articles 177 (3) (a) and (b), 176 (3) (a) and (b), and 311 (5), respectively, of the Criminal Code of Kazakhstan.

<sup>5</sup> According to the author, it was only in court that he learned that the materials of the criminal case against him consisted of 96 volumes of around 250 pages each.

<sup>6</sup> The author further submits that the National Security Committee obstructed his counsel's activities in many ways, for example by not respecting counsel-client privilege and prohibiting the lawyers from using certain documents.

<sup>7</sup> The author submits that these actions are in violation of article 275 of the Code of Criminal Procedure.

<sup>8</sup> The author submits that he complained about these violations to Astana District Court and that his complaints were either ignored or rejected.

2.12 On 21 September 2009, the National Security Committee informed the author that a new State-appointed lawyer would be joining the case to defend him. The author submits that he never requested such a lawyer and, on 29 September 2009, complained about this fact to the Prosecutor General's Office. On 2 October 2009, that Office ordered the National Security Committee to strictly follow the requirements of the Code of Criminal Procedure and to provide all criminal case materials to the author and his lawyer.

2.13 On 17 October 2009, the National Security Committee informed the author that the preliminary investigation would be reopened under the instruction from the Office of the Prosecutor General dated 13 October 2009.<sup>9</sup> On the same day, Astana District Court No. 2 extended the author's detention by four months.<sup>10</sup> The Court failed to consider the author's request to be released pending trial on the grounds that his initial detention was unlawful and that his health was deteriorating.<sup>11</sup>

2.14 On 2 December 2009, the author requested the Prosecutor's Office in Astana to give him access to the case materials. On 4 December 2009, his request was rejected. On the very same day, the National Security Committee sent the materials relating to the criminal case regarding the embezzlement and bribery charges to the Prosecutor's Office with a recommendation of indictment even though neither the author nor B. had been able to study the materials by that date. On 7 December 2009, the Prosecutor forwarded the case to Saryarka District Court. On 24 and 28 December 2009, the author requested that Court to allow him to study the case files before the hearing concerning the embezzlement and bribery charges. The Court rejected his petition.

2.15 On 18 January 2010, the author retained two more private lawyers to replace B., who was not present owing to health problems.<sup>12</sup> The presiding judge rejected his request and, on 19 January 2010, a State-appointed lawyer joined the proceedings against the author's will. During the course of the trial, the author discovered that the appointed lawyer had previously defended one of the witnesses for the prosecution, which represented a direct conflict of interest. The author submits that this fact alone should have prevented the lawyer from representing him. The appointed lawyer was passive and did not submit any requests to the court or take any action in the interest of his client.

2.16 The author was unable to consult with his privately retained lawyers during that period. In addition, he says that from 6 to 27 January 2010 he was held incommunicado, since he had no access to his lawyers and the National Security Committee refused his wife's request to meet with him.

2.17 Contrary to the requirements of the Code of Criminal Procedure, the author's entire trial was not open to the public. On 28 and 29 January 2010, hearings were held in his absence and, again, not in public.<sup>13</sup> This was done despite the fact that the author was in bad

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<sup>9</sup> The author submits that at some point the charges against him were separated into two criminal cases, the first dealing only with the embezzlement and bribery charges and the second only with the fraud charges. The reasons for this separation are not clear.

<sup>10</sup> The author submits that he was not present during this court hearing.

<sup>11</sup> The author submits that he has suffered from long-standing serious health problems and that his health has been further affected by the severe conditions of detention. On several occasions, he has suffered from hypertensive crises, acute cardiac pain and other serious symptoms. Nevertheless, his request to the Prosecutor General to be transferred to a hospital was simply ignored.

<sup>12</sup> The author submits that, owing to health problems, B. was unavailable from 30 September 2009 to 27 January 2010. Except during this period of time, the author was represented by his private lawyers during the trial.

<sup>13</sup> It is not clear from the author's submission whether any of his lawyers were present during those hearings.

health, having suffered a hypertensive crisis, lost consciousness during the hearings and asked, through his lawyers, that the hearings be postponed.

2.18 During the trial, the witnesses for the defence were prohibited from testifying about the circumstances of the case, except to testify on the author's character. The defence lawyers were further deprived of the opportunity to cross-examine witnesses. Without providing any explanations, the presiding judge did not allow D.B., one of the main witnesses for the defence, to testify.

2.19 The author claims that, after an unfair trial, he was found guilty, on 12 March 2010, of both the embezzlement and bribery charges and sentenced to 14 years of imprisonment, to be served in a maximum security prison.<sup>14</sup> Neither the verdict nor the sentence were announced in public. On 26 March 2010, the author submitted an appeal against this judgement to Astana City Court. The author referred to numerous violations of his right to a fair trial and petitioned to be acquitted and for the verdict to be declared unlawful.

2.20 On 14 July 2010, Astana City Court rejected the appeal. Although the author had asked the Court to allow him to be present, the appeal hearings were held in his absence. On 23 June 2011, the author petitioned the Supreme Court of Kazakhstan to re-examine the judgement against him. On 25 July 2011, the Supreme Court rejected the author's appeal. The author claims that the authorities refused to provide him with copies of the verdict and of the rulings, again using the pretext that the documents were "classified".

2.21 On 21 December 2011, the trial for fraud commenced.<sup>15</sup> The author contends that, just as with the previous trial, this trial too was held in private and declared "classified". The author declared on various occasions that he did not trust the court because of its ongoing refusal to conduct the trial according to the principle of public criminal proceedings. The court subsequently requested that the author remove his private counsel from the courtroom and forbade his chosen defence team from playing any further part in the trial.

2.22 The court appointed a new lawyer against the author's will, who not only acted against the author's interests but also actively contributed to upholding the prosecution's position. On 21 June 2012, the author was found guilty of fraud. He was sentenced to 10 years of imprisonment, to be served in a high security prison, to run concurrently with his previous sentence of 14 years. The author appealed against the verdict and sentence in the fraud charge. The first appeal was unsuccessful but a second appeal was pending before the Kazakh courts at the time of the initial submission.

2.23 Regarding the conditions of detention, the author submits that the cells in the detention centre where he was being held were too small,<sup>16</sup> that there was no cover on or screen around the toilet and that he was permitted to walk in a very small enclosed space for only 75 minutes twice a day.

2.24 The author claims that, while in pretrial detention, in other words from the moment of his arrest on 21 May 2009 until 11 December 2012, he lacked access to health-care facilities. At the time, the author was suffering from hypertension, hypertrophy of the left ventricle, cerebral microhaemorrhage and periodic disruptions of the cerebral blood flow.

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<sup>14</sup> The author does not provide further information regarding this judgement.

<sup>15</sup> While the author lists violations that occurred during his second trial, which were similar to alleged violations during the first trial, his claims are based solely on the first trial and the period of detention preceding it.

<sup>16</sup> The author submits that his first cell, which he shared with one other detainee, was 6 m<sup>2</sup>. The second cell, which he shared with five other detainees, was 15 m<sup>2</sup>.

The National Security Committee doctor only visited the centre periodically and, according to the author, had no qualifications to treat the author's conditions.

2.25 On several occasions, such as on 7 and 16 October 2009 and 14 November 2009, the author appealed to various authorities to be transferred to hospital from the pretrial detention centre because of his health conditions. The author has complained that those requests were considered late or ignored altogether, and that his declining health was linked to the conditions under which he was detained.<sup>17</sup>

### **The complaint**

3.1 The author claims that he was arbitrarily arrested, that he was not permitted to contact his family or a lawyer of his own choosing either when he was arrested or when he was detained, that he was not given sufficient information at the time of arrest on the reason for his arrest, that he was not promptly informed of the charges against him and that he was not brought promptly before a judge or other officer authorized by the law to exercise judicial power. He also claims that the case against him was only brought before the Akmola military court two days after his arrest and that, in accordance with Kazakh law, that court lacked jurisdiction over his case. In addition, he claims that the military court failed to consider his allegations regarding the lawfulness of his arrest and detention, that he did not have access to legal representation of his choosing and that his private lawyers were harassed by the authorities. The author submits that all of the above constitutes a violation of article 9 (1-5) of the Covenant.

3.2 Regarding his claim of a violation of article 14 (3) (a) and (b) of the Covenant, the author says that he was not informed of the nature of the charges against him until two and a half months after he was first arrested, that he did not have adequate time and facilities to prepare his defence, that he was not allowed to have a lawyer of his own choosing at some stages of the proceedings, that his private lawyer was only given one month to read the large volume of case materials and that his lawyer was not given copies of the case materials because of their "classified" status.

3.3 As to his allegations under article 14 (1) of the Covenant, the author claims that he was not tried by jury, as established by the law, and that his hearings were not held in public. Moreover, the judgements against the author were not given in public or made available to the public.

3.4 The author claims that there was no equality of arms, as the judge at the trial involving the embezzlement and bribery charges did not give equal treatment to the witnesses, that on two occasions the hearings before the court of first instance were held in his absence and that his right to the presumption of innocence was not respected, in violation of article 14 (2) and (3) (d) and (e).

3.5 The author also affirms that the State party violated his rights under articles 6, 7 and 10 of the Covenant, as it failed to discharge its responsibility to adequately monitor and treat his various health conditions while in detention. Furthermore, the author argues that his rights under article 7 were violated, as he was denied appropriate medical treatment and care while in detention, his cell was too small, there was a lack of adequate sanitary facilities and his ability to participate in activities was restricted.

3.6 The author claims that his rights under article 10 were also violated because the State party failed to ensure his access to health care and because he was held

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<sup>17</sup> The author submits that he "continues to suffer" in prison, although "the living conditions there are better" than in the detention centre.

incomunicado, with no access to his lawyers or his family. Furthermore, contrary to article 10, the author was not permitted regular correspondence and communication with his wife and children.

3.7 The author finally submits that, although the Optional Protocol entered into force for the State party on 30 September 2009, the violations against him continue, which means that the principle of *ratione temporis* should not preclude the Committee from considering any part of his communication.<sup>18</sup>

#### **State party's observations on admissibility and the merits**

4.1 In its note verbale dated 22 January 2014, the State party submits its observations on the admissibility of the communication. The State party submits that the author failed to challenge his final convictions with the Supreme Court, as he could have done under the supervisory review procedure. Under article 461 of the Code of Criminal Procedure, there is no time limit for filing such applications.

4.2 On 23 May and 23 July 2014,<sup>19</sup> the State party further submits that the author received assistance from a "qualified" lawyer, S.P., who had the security clearance needed to have access to "secret documents" in the case file. On 26 May 2009, the author requested that his wife and a privately retained lawyer represent him during the criminal proceedings. Since the author's wife and this private lawyer did not have security clearance, the request was rejected. The State-appointed lawyer, S.P., was chosen by the author.

4.3 Regarding the author's allegations of no or insufficient access to his lawyer and case file documents, the State party submits that, given the author's complaints, the Office of the Prosecutor General conducted an investigation,<sup>20</sup> and did not find violations of the relevant legislation and instructions.

4.4 The State party submits, however, that on 13 October 2009, after consideration of complaints by the author, the Office of the Prosecutor General requested that the case be returned to investigators for "reformulation of the indictment", with instructions to comply with all the requirements of the Code of Criminal Procedure. The National Security Committee was also instructed to provide full access to the case documents to the author's lawyer, B.

4.5 The State party further submits that the author's complaints regarding access to medical care were considered by Astana District Court No. 2. According to that Court's decision, on 24 August 2009 a special medical commission examined the author. The commission concluded that there was no need for permanent hospitalization. Furthermore, after numerous complaints by the author and his counsel about the critical medical condition of the author, he was sent to the national scientific medical centre, where from 17 to 21 October 2009 the author underwent another examination. The medical records dated 21 October 2009 and the findings of the commission of doctors of the medical centre indicate that the author was not in need of hospitalization.

4.6 Regarding the author's convictions, the State party submits that his guilt was proven in court on the basis of written evidence, the testimonies of victims and witnesses and other

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<sup>18</sup> The author refers to the Committee's jurisprudence in communication No. 520/1992, *Könye et al. v. Hungary*, decision adopted on 7 April 1994, para. 6.4.

<sup>19</sup> The State party's submission dated 23 July 2014 is the exact copy (in its substantive part) of its submission dated 23 May 2014.

<sup>20</sup> The State party provides no further details.



evidence.<sup>21</sup> Arguments presented by the author and his counsel were considered by the court.

4.7 Reiterating its earlier position, the State party submits that the author failed to exhaust all domestic remedies, in that he did not file an application for the supervisory review of his convictions. The present communication should therefore be declared inadmissible.

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

5.1 On 24 March and 5 August 2014, the author, responding to the State party's observations on admissibility and the merits, submits that at the time of his conviction for embezzlement and bribery the appeal route that was available to him involved a supervisory review by the Supreme Court, a process he followed and exhausted. As to the second conviction, for fraud, the State party's assertion on non-exhaustion is "misplaced", since the conviction "forms no part" of the present communication.

5.2 In describing the conditions of his imprisonment, the author submits that he is being held in a "medical block", that he has no access to hot water, that the toilets have no heating, that he has "only intermittent" access to showers and that the prison where he has been moved to, in Karaganda region, is more than 1,000 km away from his family's residence, which makes it difficult for family members to visit him.

5.3 Upon his arrival at the new prison on 14 February 2014, he was severely beaten by one of the prison guards. The author submits that after receiving blows to the back of his head he fell to the ground and was kicked in the stomach and kidneys by a prison guard. His health conditions have since deteriorated further.

5.4 During a visit on 18 February 2014, his wife saw the author's condition and complained to the Ministry of Internal Affairs on 25 February 2014. The authorities issued a statement in the media on 5 March 2014 according to which the allegations were being investigated. Neither the author nor his lawyers ever received a formal response.

5.5 Reiterating his position with regard to violations of his rights before trial, the author submits that the State-appointed lawyer was not chosen by him. To the contrary, the author was trying to secure representation by a private lawyer, but his requests were rejected. The author submits that restrictions on individuals to work with State secrets with no prior security clearance relates to their employment, not to judicial proceedings.

5.6 The author further submits that the State party's response is insufficient regarding the issue of inadequate access and facilities to prepare for his defence, as the State fails to respond to a number of detailed points made in the communication. Furthermore, no allowances were made to account for the author's health status, which prevented him from reading case documents. The author also submits that the State-appointed counsel were not qualified to deal with his case or were simply not interested in assisting him. Contrary to the requirements of article 14 (1) of the Covenant, the author was denied his right to a fair and public hearing by a competent, independent and impartial tribunal. Moreover, the author's final conviction was not made public.

5.7 The author reiterates his position that, contrary to articles 6, 7 and 10 of the Covenant, the State party failed to adequately monitor the author's health and treat his various conditions, especially his high blood pressure. The State party also failed to carry out a proper investigation into the author's claims of torture. The small size of the author's

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<sup>21</sup> The State party provides no further details.

cell, the lack of sanitary facilities and the restrictions on activities all constitute violations of article 7 of the Covenant.

5.8 The author also claims that his incommunicado detention, the lack of communication with his family “at regular intervals” and, again, the lack of adequate health care constitute violations of his rights under article 10 of the Covenant.

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

#### *Consideration of admissibility*

6.1 Before considering any claims contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication 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 notes the State party’s submission that the author has not filed a request for a supervisory review of his final convictions. In that regard, the Committee notes the author’s assertion that on 23 June 2011 he did file an application for supervisory review in the course of proceedings appealing his conviction on embezzlement and bribery charges with the Supreme Court, and that the application was rejected on 25 July 2011. Accordingly, the Committee finds that article 5 (2) (b) of the Optional Protocol does not preclude it from considering the communication as it relates to the final conviction of the author on embezzlement and bribery charges.

6.4 The Committee notes that the alleged violations of article 9 (1-5) of the Covenant, relating to the author’s arbitrary arrest, the failure to inform the author of the reason for the arrest and of the charges against him and the failure to bring him promptly before a competent judge, occurred prior to the entry into force of the Optional Protocol for the State party (i.e. before 30 September 2009). The Committee further notes that on 17 October 2009 (i.e. after the entry into force of the Optional Protocol), the author challenged, although unsuccessfully, his detention and his claims falling under article 9 (1) and (3)-(5) at Astana District Court No. 2. Therefore, the Committee is not precluded by the reasons of *ratione temporis* from considering that part of the claim, although it is precluded from considering the author’s claim falling under article 9 (2) of the Covenant.

6.5 As to the alleged violation of articles 6 and 7 of the Covenant, the Committee considers that the author has failed to provide sufficient information and factual support, and, therefore, has failed to substantiate his claims regarding his right to life and freedom from torture and cruel, inhuman and degrading treatment or punishment. Accordingly, and in the absence of any further pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate these claims for the purposes of admissibility. Accordingly, it declares that part of the communication inadmissible under article 2 of the Optional Protocol.

6.6 Regarding the author’s claims under article 14 (2) of the Covenant, the author has failed to provide any elements to demonstrate that the State party violated his right to the presumption of innocence. Regarding the author’s allegations concerning violations of article 14 (3) (e) of the Covenant in relation to the examination of evidence and of witnesses during the trial, the Committee recalls that it is generally for States parties’ courts to evaluate the facts and the evidence in a particular case, unless it can be ascertained that

the evaluation was clearly arbitrary or amounted to a denial of justice, or that the court failed in its duty to maintain independence and impartiality.<sup>22</sup> In the light of the information available on file, the Committee considers that, in the present case, the author has failed to demonstrate that the alleged “lack of equality of arms” reached the threshold for arbitrariness in the evaluation of the evidence, or amounted to a denial of justice. The Committee therefore concludes that the author’s claims under article 14 (2) and (3) (e) of the Covenant have not been sufficiently substantiated. Accordingly, the Committee declares that part of the communication inadmissible under article 2 of the Optional Protocol.

6.7 In the Committee’s view, the author has sufficiently substantiated, for the purposes of admissibility, his claims under articles 9 (1) and (3)-(5), 10 (1) and 14 (1) and (3) (a), (b) and (d) of the Covenant and therefore proceeds with its consideration of the merits.

#### *Consideration of the merits*

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

7.2 The Committee notes the author’s claim that the conditions of his pretrial detention and, subsequently, of imprisonment amounted to a violation of his rights under article 10 of the Covenant. The author submits to the Committee that his already bad health condition deteriorated after the prolonged detention and that the prison where he is serving his sentence does not have adequate facilities for the level of medical care that he needs. The Committee further notes the incident that occurred on 14 February 2014, when a prison guard allegedly assaulted the author, upon his arrival to the prison.

7.3 The State party contested these allegations stating that the author received medical care when it was requested, and that he did not need hospitalization. The State party, however, did not comment or provide any further information on the author’s deteriorating health status and on the lack of immediate medical assistance in response to hypertensive crises and loss of consciousness. The Committee notes that the State party is under an obligation to observe certain minimum standards of detention, which include the provision of medical care and treatment for sick prisoners, in accordance with rule 22 of the Standard Minimum Rules for the Treatment of Prisoners. It is clear from the author’s account that he was not able to receive proper medical treatment from the authorities of the detention centre or, subsequently, while serving his sentence in prison. The Committee also notes the author’s allegations that he was denied access to his family and lawyers. On the basis of the information before it, the Committee finds that confining the author in such conditions constitutes a violation of his right to be treated with humanity and with respect for the inherent dignity of the human person under article 10 (1) of the Covenant.<sup>23</sup>

7.4 The Committee also notes that the trial of the author was not open to the public, that the author was denied the right to request a jury trial, which should have been available to him in accordance with national law, and that the author’s final conviction was not made public. The Committee notes that the State party provided no explanations as to the secret nature of the proceedings, except for the contention that counsel for the author needed a

<sup>22</sup> See, inter alia, communications No. 1188/2003, *Riedl-Riedenstein et al. v. Germany*, decision of inadmissibility adopted on 2 November 2004, para. 7.3; and No. 1138/2002, *Arenz et al. v. Germany*, decision of inadmissibility adopted on 24 March 2004, para. 8.6.

<sup>23</sup> See, for instance, communications No. 590/1994, *Bennet v. Jamaica*, Views adopted on 25 March 1999, paras. 10.7-10.8; No. 695/1993, *Simpson v. Jamaica*, Views adopted on 31 October 2001, para. 7.2; No. 704/1996, *Shaw v. Jamaica*, Views adopted on 2 April 1998, para. 7.1; and No. 734/1997, *McLeod v. Jamaica*, Views adopted on 31 March 1998, para. 6.4.

security clearance to work with secret documents. The Committee recalls its general comment No. 32 (2007) on the right to equality before the courts and tribunals and to a fair trial, in which it stated that all trials in criminal matters must in principle be conducted orally and in public, unless the court decides to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security. Even in cases in which the public is excluded from a trial, the judgement, including the essential findings, evidence and legal reasoning, must be made public. The Committee regrets the lack of response by the State party's authorities to the specific argument raised by the author both at the domestic level and in his communication to the Committee. The Committee therefore considers that the State party failed to justify the exclusion of the public from the author's trial under one of the justifications laid out in article 14 (1) and, in particular, for reasons of national security. In the absence of other pertinent information on file, the Committee considers that the State party violated the author's rights under article 14 (1) of the Covenant.

7.5 The Committee further notes the author's contention that he was not able to consult with a lawyer of his own choosing, that he was not represented by a privately retained lawyer from 30 September 2009 to 27 January 2010 and that the court hearings on 28 and 29 January 2010 took place without the author being present, in spite of his request that the hearings be postponed because of his bad health. The Committee recalls its general comment No. 32, according to which accused persons are entitled to be present during their trial and have a right to instruct their lawyer on the conduct of their case. The Committee takes note of the author's complaints that the authorities hindered his lawyers from fulfilling their task effectively by not providing them with access to the author, violating the confidentiality of attorney-client meetings, searching the personal belongings of the lawyers and prohibiting them from bringing in certain documents. The Committee takes note of the State party's claim that the privately retained lawyers did not have security clearance to work with "State secrets". The State party has, however, failed to justify the reasons for refusing security clearance to the author's lawyers. The State party has also failed to explain why it was necessary to conduct the hearings on 28 and 29 January 2010 without the author being present. In the absence of any other pertinent observations from the State party, the Committee considers that in the present case the author's rights under article 14 (3) (b) and (d) of the Covenant have been violated.

7.6 Having found a violation of articles 10 (1) and 14 (1) and (3) (b) and (d) of the Covenant, the Committee will not examine separately the author's remaining claims under articles 9 (1) and (3)-(5) and 14 (3) (a) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under articles 9 (1-2), 10 (1) and 14 (1) and (3) (b) and (d) 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 take appropriate steps to: (a) quash the author's conviction and release him, and, if deemed necessary, conduct a new trial, subject to the principles of fair and public hearings, access to counsel and other procedural safeguards; (b) pending release, provide the author with continuous and effective access to health care in the place of imprisonment; and (c) provide the author with appropriate reparation, including adequate compensation. The State party is also under an obligation to take steps to prevent similar violations occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not 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. In addition, it requests the State party to publish those Views.

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