



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2689/2015*, **

<i>Communication submitted by:</i>	M.Z. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Uzbekistan
<i>Date of communication:</i>	17 November 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 27 November 2015 (not issued in document form)
<i>Date of adoption of decision:</i>	13 March 2020
<i>Subject matter:</i>	Fair trial; access to a lawyer; ill-treatment; dismissal of a university professor; presumption of innocence
<i>Procedural issue:</i>	None
<i>Substantive issue:</i>	Level of substantiation of claims
<i>Articles of the Covenant:</i>	2 (3), 6, 7, 14, 15, 17, 19 and 26
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The author of the communication is M.Z., a national of Uzbekistan born in 1969. She claims that the State party has violated her rights under articles 2 (3), 6, 7, 14, 15, 17, 19 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 28 December 1995. The author is not represented by counsel.

1.2 On 27 November 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, informed the author that it had decided not to issue a request for interim measures under rule 94 of the Committee's rules of procedure.

Factual background

2.1 On 9 June 2014, the author, a professor of French language at Bukhara State University was approached by her student, N.B., who handed her an envelope. A few minutes

* Adopted by the Committee at its 128th session (2–27 March 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja and Gentian Zyberi.



later, the author was arrested by the police on suspicion of receiving a bribe in the amount of \$200¹ and charged under article 214 of the Criminal Code of Uzbekistan.² The author claims that she was read her rights but that, having been in a state of shock, she did not understand them.

2.2 The author claims that, under the Code of Criminal Procedure of Uzbekistan, the investigator is required to provide those detained with a defence attorney and to notify his or her family of the detention. In the author's case, the investigator provided no access to a lawyer, nor did he notify the author's relatives. The author notes that the investigator took her fingerprints in the presence of witnesses, without an attorney.

2.3 The author was brought to the Office of the Prosecutor of Bukhara Region. She claims that the investigator swore at her and demanded \$20,000 or \$30,000 to terminate the proceedings. After that, the investigator began to interrogate her without a lawyer. The author asked for access to a lawyer, to be allowed to call her relatives and to use a bathroom, but her requests were ignored. The author was threatened with physical abuse and a harsher criminal penalty if she did not cooperate. The investigator also threatened to inject her with some drugs in order to make her confess. The interrogation commenced between 12 and 12:30 p.m., but the author was allowed to use bathroom only at around 6 p.m.

2.4 Later that evening, a lawyer arrived, but he showed no interest in the case, and the author could not meet with him in private. The lawyer met with the author for only 10 minutes and insisted that the author sign the interrogation records. When the author began to review the minutes of the interrogation, the investigator yelled at her, saying that she was not in a library. The author therefore felt harassed and signed the records, including a confession.

2.5 The author believes that her arrest was initiated and arranged by the management of the university. She explains that she never had any issue with the university administration, until a new dean of faculty took up his post in 2012. The new dean had a personal grudge against her, humiliating her publicly and in front of her peers and threatening her with dismissal. Unable to withstand the insults, the author asked her husband to lodge a complaint with the rector of the university, criticizing the methods of work of the recently appointed dean, accusing him of discrimination, including forcing the author to do hard physical work outside of working hours, instead of involving male teachers. He requested that the rector undertake an internal investigation and take disciplinary action against the dean.³

2.6 The author submits that, after the initiation of her criminal case, she continued working. To force her to leave her post, the university management initiated a harassment campaign. The university initiated its own internal investigation, and the author's actions were found to be in violation of article 100 of the Labour Code of Uzbekistan. As a result, the author was dismissed from her post on 12 September 2014.⁴

2.7 On 27 October 2014, the Criminal Court of Bukhara City sentenced the author under article 214 of the Criminal Code and imposed a fine of 25 times the monthly minimum wage, equalling 2,402,625 sum (approximately \$1,010). The Court established that the author had committed a crime by extorting a fee in exchange for performing work that was part of her immediate official duties. It stated that the author was assigned as a thesis advisor to N.B. and was responsible for supervising and guiding the preparation of her dissertation. In the course of that supervisory work, the author demanded \$200 in exchange for the preparation of the thesis drafted by the author. On 9 June 2014, the author received \$200 from N.B. The Court took into account the author's arguments that N.B. lacked the skills and experience to draft the thesis and that she therefore helped her to draft a 60-page thesis. The author adds

¹ Currency notes were marked with a special chemical substance planted by law enforcement personnel.

² Article 214 of the Criminal Code envisages liability for the illegal receipt of material values or property benefits by an employee of a State body, an organization with State participation or a self-governing body of citizens.

³ In that connection, see the State party's observations of 6 December 2016 (para. 8.1 below).

⁴ The author provided a translation of Order of the Rector of the University No. 644, in which reference is made to article 100 (4) of the Labor Code of 1996, which stipulates the termination of an employment contract for a single gross violation of duties committed by an employee.

that, although she maintained her innocence and requested further investigation into the case, the Court found that her guilt was fully proven on the basis of the testimonies of the victim and witnesses, the conclusions of the forensic-chemical examination, the voice recording and other corroborating evidence.⁵ The author believes that the court was not independent and impartial, and she expresses concern that the Office of the Prosecutor exercises a strong influence on other State institutions, and the judiciary in particular.

2.8 On 5 December 2014, the Court of Appeal of Bukhara Region dismissed the author's appeal.⁶ The Court took into account the author's arguments that the extortion of money from N.B. was not proven and that the latter gave her \$200 voluntarily. The Court assessed all materials and evidence available and ruled against the author, however. The Court also stated that the crime committed by the author fell under the Decree of the Senate of Oliy Majlis of Uzbekistan on amnesty and, therefore, ruled that she was exempt from paying the fine.⁷

2.9 On 17 January 2015, the Criminal Court of Bukhara Region dismissed the author's appeal that was submitted to the Supreme Court of Uzbekistan. Referring to the author's claims that the investigation was carried out with flagrant criminal procedure violations, that her defence rights were not clearly explained to her and that the case had been fabricated by university officials, the Court noted that the author's right to appeal to law enforcement bodies was indeed explained to her.

2.10 On an unspecified date, the author appealed to the Judicial Chamber on Criminal Cases of the Supreme Court and to the Chairman of the Supreme Court of Uzbekistan, challenging the lower courts' rulings. In her complaint, she noted, *inter alia*, that the trial was not impartial, that her guilt was not proven and that her right to legal assistance had been violated. Both appeals were dismissed, on 24 February and 29 June 2015, respectively. In its decision, the Supreme Court held that, on the basis of the materials on file, the lower court had assessed the evidence, qualified the author's actions and issued the sentence correctly; the author's right to legal assistance was explained to her during the preliminary investigation and was represented by two different lawyers.

2.11 The author submits that she filed several complaints with the Office of the Prosecutor of Bukhara City and the Office of the Prosecutor General of Uzbekistan.⁸ On 23 February 2015, she met with a prosecutor who talked to her very rudely and told her that she would never get any redress for her complaints. A few days later, she tried to submit an additional complaint to the prosecutor's office, in vain.

2.12 The author submits that, between April and May 2015, the video of her apprehension by law enforcement officers was aired several times on regional television, thereby discrediting and humiliating her.⁹ She submits that, since then, her health has deteriorated.¹⁰

The complaint

3.1 The author claims that the State party has violated her rights under articles 2 (3), 6, 7, 14, 15, 17, 19 and 26 of the Covenant.¹¹

3.2 The author claims that her rights under article 14 (3) were violated, given that the court denied her the right to legal assistance of her own choosing, that there was an undue

⁵ The author provided a Russian translation of the court ruling.

⁶ The author informed the Committee that the appeal was submitted on 13 November 2014, but did not provide a copy of the appeal, nor a summary thereof.

⁷ The amnesty was announced on 14 November 2014 by the Senate of Oliy Majlis in connection with the twenty-second anniversary of the adoption of the Constitution of Uzbekistan.

⁸ The author does not provide an exact date and claims that she submitted over 60 complaints to State institutions, including the President of Uzbekistan, the Ombudsperson, the Office of the Prosecutor of Bukhara City, the Office of the Prosecutor General of Uzbekistan, the National Security Service, various courts and Bukhara State University.

⁹ The author did not provide any additional information on those incidents.

¹⁰ The author did not inform the Committee whether any medical examinations were conducted in that regard.

¹¹ The author did not elaborate on how her specific rights under the Covenant were violated.

delay in the trial and that the court did not allow her to have a witness questioned during the trial.¹²

3.3 The author claims that, by dismissing her from the university before the Court had delivered its ruling, the State party has violated her right to the presumption of innocence as encapsulated in article 14 (2) of the Covenant.

3.4 The author requests that the Committee ask the State party to conduct a proper judicial review of her complaints.

State party's observations on admissibility and the merits

4.1 On 21 January 2016, the State party submitted its observations on the admissibility and the merits of the communication. It notes that, on 27 October 2014, the Criminal Court of Bukhara City found the author guilty of violating article 214 of the Criminal Code and imposed a fine equal to 25 times the monthly minimum wage in Uzbekistan, equalling 2,402,625 sum.

4.2 On 5 December 2014, the Court of Appeal of Bukhara Region dismissed the author's appeal. By virtue of an amnesty act, the author was absolved by the court from paying the fine.

4.3 The State party notes that the court learned that the author, a professor in the Romano-Germanic philology faculty of Bukhara State University, extorted \$200 from N.B. in exchange for assistance in the process of defending her thesis. The author was apprehended by law enforcement officers on 9 June 2014, upon her receipt of the money. The same day, the Office of the Prosecutor of Bukhara Region initiated a criminal case against her under article 214 of the Criminal Code. The author was interrogated as a suspect, and she confessed to having received \$200 from N.B.

4.4 On 11 June 2014, the criminal case was submitted to the Department of Internal Affairs of Bukhara City for further investigation. In the context of the investigation, N.B. was given victim status, and she testified against the author, claiming that, on 7 June 2014, the latter had demanded \$200 in exchange for the arrangement of a successful thesis defence. N.B. filed a complaint against the author with the Office of the Prosecutor of Bukhara City.

4.5 On 12 August 2014, the criminal case relating to the charges under article 214 of the Criminal Code against the author was brought to court.

4.6 The State party notes that the author's guilt was fully proven, given the report on the results of the special operation conducted by law enforcement authorities, video materials, physical evidence, the report of the forensic chemical examination, the testimony of witnesses and other materials pertaining to the case.

4.7 The State party also notes that, in the course of the judicial investigation, no violations of the norms of the criminal procedural legislation or of the rights and legitimate interests of the author, nor any use of unauthorized methods of investigation, were revealed.

4.8 The State party concludes that the author's claims are unfounded.

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

5.1 On 21 March 2016, the author commented on the State party's observations on the admissibility and the merits of the communication. She notes that, on 11 March 2016, her mother passed away. Given that she was suffering from that loss, she was unable to translate all complaints that she referred to in her communication into Russian, due to unexpected expenses that had arisen.

5.2 The author submits that the witnesses and victim in the case testified under pressure and that the domestic courts rejected multiple motions from her during the proceedings, in violation of the Criminal Procedure Code of Uzbekistan. In that context, she reiterates her disagreement with the court's appraisal of the evidence, noting that it was one-sided and

¹² The author submits that the delay of four months included two months of investigation and two months of trial proceedings.

favoured the victim, and that therefore her rights under article 14 of the Covenant were violated.

5.3 The author maintains that her right to legal assistance during the interrogation, as envisaged by the article 14 (3) of the Covenant, was violated. She reiterates that she was subjected to ill-treatment by the investigator, who threatened her with physical abuse and spoke to her very rudely.

5.4 The author claims that the trial suffered from an undue delay, contrary to article 14 (3) of the Covenant, and that her right to be presumed innocent was breached by the State party, in violation of article 14 (2) of the Covenant. She requests that the order of her dismissal issued by Bukhara State University be revoked.

5.5 The author reiterates her requests to the Committee to ask the State party to conduct a proper judicial review of her complaints, to overturn the judgments and to provide her with an effective remedy.

State party's additional observations

6.1 In a note verbale of 12 May 2016, the State party addressed the author's comments. It rejects her claims and reiterates that she was apprehended by law enforcement officers on 9 June 2014, when she received money from N.B. The State party concludes that the author's guilt was fully proven in Court and that the Court ruling was based on an appraisal of video materials, physical evidence, the report of the forensic chemical examination, the testimony of witnesses and other materials pertaining to the case.

6.2 The State party reiterates its earlier arguments and concludes that the author's claims are groundless.

Additional comments from the author

7.1 The author submitted a series of additional comments. Regarding her dismissal, she provides copies of the replies received from various State institutions, including the Office of the Prosecutor of Bukhara Region, the Council of the Federation of Trade Unions of Uzbekistan, the Council of the Federation of Trade Unions of Bukhara Region and the Ministry of Higher and Secondary-Specialized Education of Uzbekistan, in all of which it was noted that the dismissal of the author by the university was in line with the Labour Code.

7.2 The author notes that, in July 2017, she had a meeting at the Office of the Prosecutor of Bukhara City, at which she was informed of the decision of Bukhara State University to employ her as a teacher of Russian language and literature. The author accepted the offer as a temporary solution, given that there was no vacancy in the Romano-Germanic philology faculty of the university.

7.3 In the communication submitted on 15 August 2018, the author notes that, as at 23 September 2017, she had begun work as a French language teacher.

State party's further observations

8.1 By note verbale of 6 December 2016, the State party submitted further observations in which it reiterated its previous arguments. It notes that the Department of Internal Affairs of Bukhara City conducted a thorough verification, with the involvement of experts, and refused to open a criminal case against the dean of the university. The legality of that decision was examined, and no grounds for its reversal were found.

8.2 In a note verbale of 3 February 2017, the State party referred to the author's claims of torture and ill-treatment, but indicated that, in the context of the criminal proceedings, no breach of criminal procedure or the author's rights or legitimate interests was found.

8.3 In a note verbale of 31 July 2017, the State party referred to the author's dismissal and to the replies received from the Office of the Prosecutor of Bukhara City and the Council of the Federation of Trade Unions in that connection. It notes that neither institution found the author's dismissal to have been unlawful. Referring to her re-employment, the State party notes that, according to the reply received from the Ministry of Higher and Secondary-Specialized Education on 3 July 2017, the author was hired as teacher of Russian language

and literature at Bukhara State University. According to that decision, the author was to begin work on 26 August 2017, until a competitive examination was conducted.

8.4 By note verbale of 25 October 2018, the State party informed the Committee that, by order of the Rector of Bukhara State University, the author was employed in the Department of Foreign Languages.

Issues and procedures before the Committee

Consideration of admissibility

9.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

9.2 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.

9.3 The Committee takes note of the fact that the author claims to have exhausted the available domestic remedies and that the State party does not challenge the admissibility of the communication on those grounds. The Committee therefore considers that it is not precluded under article 5 (2) (b) of the Optional Protocol from examining the present case.

9.4 The Committee also takes note of the author's claim that the State party violated article 2 (3) of the Covenant, owing to its failure to provide her with an effective remedy in response to her complaints. The Committee recalls its jurisprudence, in which it has indicated that the provisions of article 2 of the Covenant set out general obligations for States parties; they cannot give rise to a claim under the Optional Protocol, when invoked independently. The Committee therefore considers that the author's claims under article 2 of the Covenant are inadmissible under article 3 of the Optional Protocol.

9.5 The Committee further takes note of the author's claim that her rights under articles 6, 15, 17, 19 and 26 of the Covenant have been violated, but that she has not provided any information or clarifications to support those claims. In the absence of any other pertinent information on file, the Committee considers that this part of the communication is inadmissible under article 2 of the Optional Protocol.

9.6 The author has claimed that the State party violated article 7 of the Covenant by becoming complicit in the inhuman and degrading treatment to which she was subjected. In support of her claim, she indicated that, following her apprehension on 9 June 2014, the investigator threatened her with physical abuse and a harsher criminal penalty if she did not cooperate and that she was not allowed to use a bathroom for over five hours. The Committee takes note of the State party's observation, in its reply of 3 February 2017, that no facts relating to the use of torture and ill-treatment could be established in the author's case. The Committee is of the view that, in the present case, the author has failed to provide sufficient information in substantiation of those particular claims. Accordingly, it considers that this part of the communication is inadmissible under article 2 of the Optional Protocol.

9.7 The Committee takes note of the author's claims that the court was not independent and impartial, that the investigation was carried out in flagrant breach of criminal procedure law, that her right to legal assistance was not clearly explained, that her requests to question a witness during the trial were denied, that the court assessed evidence wrongly and in a one-sided manner which favoured the victim and that both the investigation and the trial suffered from undue delays. The Committee takes note of the State party's observations that the courts assessed the evidence adequately, qualified the author's actions correctly and issued the sentence appropriately.

9.8 The Committee recalls that it is generally for the courts of States parties to the Covenant to review the facts and evidence, as well as the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice or that the court otherwise

violated its obligations of independence and impartiality.¹³ The Committee notes that the material before it contains no elements to demonstrate that the court proceedings in the author's case suffered from any such defects. The Committee also notes that the time frame of the investigation and trial, which lasted for four months, cannot be considered as constituting an undue delay. Accordingly, the Committee considers that the author has failed to substantiate her claims under article 14 (1) and (3) and declares them inadmissible under article 2 of the Optional Protocol.

9.9 The Committee takes note of the author's claim that, by dismissing her from Bukhara State University before waiting for the outcome of the pending court proceedings, the State party has violated her right to be presumed innocent under article 14 (2) of the Covenant. The Committee notes that the author was dismissed from the university under the provisions of domestic labour law, which regulates the relationship between employers and workers, and which is beyond the scope the Covenant. In this connection, the Committee notes that a decision by an employer to take disciplinary measures on the basis of credible information against an employee suspected of committing a crime before the criminal proceedings have finished is not incompatible per se with the presumption of innocence that primarily appertains to the operation of a national criminal justice system. Accordingly, the Committee considers that this part of the communication is inadmissible under article 2 of the Optional Protocol.

10. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.

¹³ See, e.g., *Riedl-Riedenstein et al. v. Germany* (CCPR/C/82/D/1188/2003), para. 7.3; *Arenz et al. v. Germany* (CCPR/C/80/D/1138/2002), para. 8.6; and *Tyan v. Kazakhstan* (CCPR/C/119/D/2125/2011), para. 8.10. See also the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 26.