



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under the Optional Protocol, concerning communication No. 2189/2012*, **, ***

<i>Communication submitted by:</i>	F.A., represented by counsel, Irina Biryukova
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	9 August 2012 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 17 August 2012 (not issued in document form)
<i>Date of adoption of Views:</i>	27 July 2018
<i>Subject matter:</i>	Extradition to Uzbekistan
<i>Procedural issue:</i>	Level of substantiation of claim
<i>Substantive issues:</i>	Torture; non-refoulement; arbitrary detention
<i>Articles of the Covenant:</i>	7; 9
<i>Articles of the Optional Protocol:</i>	2; 5 (2) (a); 5 (2) (b)

1.1 The author of the communication is F.A., an Uzbek national born in 1990. When submitting the communication, the author was facing extradition on criminal charges to Uzbekistan. He claims that if it proceeds with his extradition, the Russian Federation will violate his rights under articles 7 and 9 of the International Covenant on Civil and Political Rights.¹ The Optional Protocol entered into force for the Russian Federation on 1 January 1992. The author is represented by counsel, Irina Biryukova.

1.2 On 17 August 2012, pursuant to rule 92 of the Committee's rules of procedure, 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 of interim measures of protection and thus not to ask the State party to refrain from extraditing him to

* Adopted by the Committee at its 123rd session (2 to 27 July 2018).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

*** The text of an individual opinion (dissenting) of Committee member José Manuel Santos Pais is annexed to the present Views.

¹ The author was extradited to Uzbekistan on 1 October 2012, after the submission of the initial communication.



Uzbekistan pending the examination of his communication. On 1 October 2012, the author was extradited to Uzbekistan, where he was convicted of fraud, robbery and murder and sentenced to 18 years' imprisonment.

The facts as submitted by the author

2.1 The author is a karate athlete. His father and brother chaired the Karate Federation of the City of Tashkent in Uzbekistan. On an unspecified date, the author was interviewed relating to his participation in a world karate tournament and he mentioned that he would not have been able to participate in the tournament without his parents' help. In 2009, the author's brother was interviewed by an Uzbek television channel. He criticized the Uzbek authorities for their unwillingness to provide financial support to sports organizations and the misuse of funds assigned to them. Subsequently, the brother was detained for two days and received threats from the authorities, while a number of Uzbek athletes, including the author, were forbidden to participate in international tournaments. The author claims that the authorities did not subject him to physical abuse at the time only because he was a minor. In 2011, the author's brother again publicly criticized the authorities. As a result, fraud charges were fabricated against him and he was sentenced to nine years' imprisonment. The author claims that his brother was forced to confess guilt under duress inflicted by officials; however, no criminal case for the infliction of bodily injury was opened against the officials as a result of his complaints, owing to the absence of *corpus delicti* in their actions.

2.2 The author has resided in Moscow since 2009 and has regularly travelled to Uzbekistan.² On 22 February 2011, the Department of Interior of the Yakkasaray district in Tashkent charged the author in absentia with fraud, under article 168 (3) of the Criminal Code. On 23 February 2011, the Yakkasaray district court ordered his detention, again in absentia, on the fraud charges. On 5 November 2011, the author was arrested in Moscow, pursuant to an international search warrant issued by Uzbekistan. On 7 November 2011, the Office of the Prosecutor of the Presnenskiy district in Moscow ordered his detention pending extradition, with reference to the decision of 23 February 2011 of the Yakkasaray district court. On 28 December 2011, the district prosecutor requested that his detention pending extradition be extended for six months, until 5 May 2012. The Presnenskiy district court granted the request on the same day. On 4 July 2012, the Moscow city court upheld the decision on appeal. On 13 February 2012, the district court extended the author's detention for another six months until 5 November 2012. On 4 July 2012, the Moscow city court upheld the decision on appeal.³

2.3 On 9 December 2011, the Office of the Uzbek Prosecutor General requested the author's extradition on the fraud charges. On 30 March 2012, the Office of the Russian Prosecutor General granted the extradition request based, *inter alia*, on assurances by the requesting party that the author would not be subjected to torture or inhuman treatment upon return. The author appealed, claiming that he would be subjected to torture and inhuman treatment in Uzbekistan. On 9 July 2012, the Moscow city court rejected his appeal as unsubstantiated, in particular based on the Uzbek assurances. The author appealed, referring to international sources confirming the widespread and systematic use of torture in Uzbekistan and the findings of the European Court of Human Rights that assurances should

² According to the decision on file of the Federal Migration Board of 16 March 2012, the author has been living in Moscow without registration as a migrant since 24 November 2010 and was therefore in violation of the migration legislation.

³ According to the decision of the Moscow city court of 4 July 2012, the author's counsel challenged the court decision of 3 May 2012 to extend his detention on the grounds that, in particular, the court had not indicated which specific extradition measures that were being taken and would be taken before 5 November 2012 would justify the extension of the author's detention for such a long period of time; that the Minsk Convention regulates extradition matters before an extradition order is issued but not up to when a person is extradited; that article 109 of the Russian Criminal Procedure Code does not specify the circumstances for extending detention pending extradition after receipt of an extradition request and the issuance of an extradition order; that the extradition request was received from Uzbekistan over one month after the author's detention, in violation of the Minsk Convention and the author's constitutional rights; and that therefore the author should be released.

not be considered as a sufficient guarantee against the risk of torture if the requesting State resorts to torture widely and systematically. On 13 August 2012, on appeal, the Supreme Court upheld the decision of the city court.

2.4 On 29 December 2011, the author applied for refugee status in the Russian Federation. On 16 March 2012, the Department of the Federal Migration Board in Moscow rejected his application, *inter alia*, on the grounds that he had not justified his claim that he would be subjected to torture in Uzbekistan and that he had applied for refugee status only after his arrest pending extradition and not within 24 hours of crossing the border of the Russian Federation, as required by the federal law on refugees. The author appealed on 3 May 2012, claiming that the diplomatic assurances provided by the Uzbek authorities did not offer sufficient protection against the risk of his being subjected to torture. On 7 June 2012, the Federal Migration Board rejected his appeal. On 13 July 2012, the author submitted another appeal before the Basmany district court in Moscow. Proceedings were still pending at the time of the submission.

2.5 On 19 August 2012, in a separate submission, the author referred to the Protocol to the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters. Article 62 (1) of the Minsk Convention provides that a person detained pending extradition must be released if the extradition request is not received within one month of the detention. The Protocol in question amended that provision, extending the period for up to 40 days. As Uzbekistan has not ratified the Protocol, in the author's view it is subject to the requirements of the initial edition of article 62 (1) of the Minsk Convention. In the present case, the extradition request was received on 9 December 2011, more than one month after the author was detained on 7 November 2011. The author should therefore have been released on 7 December 2011. However, the author was continuously detained and his detention was extended by six months on two occasions.

2.6 On 1 October 2012, the author was extradited to Uzbekistan, while the proceedings relating to his application for refugee status were still pending.

The complaint

3.1 In his initial submission, the author claims that his extradition from the Russian Federation to Uzbekistan would expose him to the risk of torture, contrary to article 7 of the Covenant as he would be forced to confess guilt for a crime he did not commit. He alleges that he is being persecuted for political reasons. The false accusations against him, his brother's experience, the reported widespread use of torture in Uzbekistan and the fact that he had reached his majority, would increase the risk of him being subjected to torture. Furthermore, he would be arrested immediately upon arrival in Uzbekistan in the light of the decision of 23 February 2011 to have him detained.

3.2 The author further emphasizes the limited scope, and hence ineffectiveness, of ruling No. 11 of the plenum of the Supreme Court of the Russian Federation of 14 June 2012, according to which submitting an appeal against a decision to deny refugee status should have a suspensive effect on extradition. He claims that the ruling is binding only for the courts of general jurisdiction while extradition is implemented by the Office of the Prosecutor General and the Federal Penitentiary Service. He maintains that extradition may be postponed while his refugee status is determined only if a request for interim measures of protection is issued by the Committee.

3.3 In his submission of 19 August 2012, the author also claims a violation of article 9 of the Covenant, as he was continuously detained between his arrest on 5 November 2011 and his extradition on 1 October 2012, despite the failure of Uzbekistan to file an extradition request within one month of his detention, as provided for under article 62 (1) of the Minsk Convention.

State party's observations

4.1 By note verbale of 19 December 2013, the State party submitted its observations on the merits of the communication. It refutes the author's allegations as unsubstantiated. It notes that, pursuant to article 464 (1) (2) of the Code of Criminal Procedure, the extradition is precluded if the person, in respect of whom an extradition request was received from a

foreign State, has been granted asylum in the Russian Federation owing to possible persecution in that State on account of his race, religion, citizenship, nationality, affiliation with a certain social group or his political views. According to paragraph 10 of the Supreme Court ruling No. 11 of 14 June 2012, conditions and grounds for extradition are provided for by the Code of Criminal Procedure, relevant laws and international treaties ratified by the State party. Pursuant to articles 10 (1) and 12 (4) of the federal law on refugees and articles 32 and 33 of the Convention relating to the Status of Refugees, the person in respect of whom refugee status or asylum was granted and an extradition request was received by the Russian Federation cannot be extradited to a country where the circumstances underlying the decision to grant refugee status or asylum took place. According to paragraphs 11 and 12 of the Supreme Court ruling, the person shall not be extradited if extradition is sought for a crime punishable by death under the law of the requesting State and it has not provided guarantees, which should be deemed sufficient by the State party, that the death penalty would not be carried out, in line with article 2 of the European Convention on Human Rights and article 11 of the European Convention on Extradition. Such guarantees include legal provisions prohibiting the death penalty and assurances by competent authorities. Courts should take into account the non-refoulement principle enshrined in article 7 of the Covenant and article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The State party's prosecuting authorities should verify the absence of possible grounds for torture, the death penalty, inhuman or degrading treatment or punishment, or persecution in the requesting State. In that assessment, both the general human rights situation in the requesting State and individual circumstances should be taken into account.

4.2 The Moscow city court examined and dismissed the author's appeal against the decision of the Office of the Prosecutor General to grant the extradition request. It established that the author was accused of two crimes under article 168 (3) (a) of the Uzbek Criminal Code, which is equivalent to the crime under article 159 (4) of the Russian Criminal Code, punishable by up to 10 years' imprisonment. Under article 462 of the Code of Criminal Procedure and article 56 of the Minsk Convention, the contracting parties should extradite to each other, upon request, people who are on their territories, in order to "bring them to criminal responsibility" or execute a sentence. The State party and Uzbekistan are parties to the Minsk Convention. The period of limitation for the institution of criminal proceedings against the author has not elapsed under Russian or Uzbek law. The author is an Uzbek citizen and has not applied for Russian citizenship. His application for refugee status was rejected. Russian courts examined his allegations of torture and persecution if returned to Uzbekistan and dismissed them as unsubstantiated. The author is being prosecuted for a common law crime that is not politically motivated. He has not been subjected to discrimination on any grounds.

4.3 When requesting the author's extradition, the Office of the Uzbek Prosecutor stated that he would be prosecuted in line with national legislation and the international treaties ratified by Uzbekistan. He would not be subjected to torture, inhuman or degrading treatment and his right to defend himself, including through the assistance of a lawyer, would be guaranteed. He would not be extradited to a third country, prosecuted or sentenced for having committed a crime before his extradition without the consent of the State party. He would be able to leave the country freely after the court proceedings were finished and the sentence served. There is no reason to doubt those assurances. Uzbekistan is a party to a number of international treaties, including the Covenant and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Furthermore, the Prosecutor General of Uzbekistan provided additional assurances that the author would not be persecuted for reasons of race, religion, nationality or political opinion; that he would not be subjected to torture, violence or any other kind of inhuman or degrading treatment; that his right to defend himself would be ensured, including through the assistance of a lawyer; and that he would be prosecuted in line with Uzbek legislation.

4.4 The State party refuted the author's argument that he would be subjected to torture and persecution because it is commonly practised in Uzbekistan, according to international reports. The Moscow city court established that those allegations were not supported by evidence and were in contradiction to the assurances provided by Uzbekistan. On 13 August 2012, the Supreme Court upheld those findings. The Supreme Court established

that the extradition request and the decision to extradite were both in compliance with the Minsk Convention and the Code of Criminal Procedure.

4.5 Furthermore, the migration authorities and the Basmanyy district court in Moscow rejected the author's application for refugee status. The court found that the author had filed his application only after his arrest by law enforcement officials, whereas according to article 4 (1) (2) of the federal law on refugees, such an application should have been submitted upon crossing the border of the Russian Federation. The court also found that the author had failed to substantiate the risk of persecution should he be returned to Uzbekistan. It also considered that Uzbekistan had ratified six United Nations human rights treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and regularly submitted periodic reports on their implementation. In the circumstances, the court found that the author's extradition to Uzbekistan would not put his life at risk. On 6 February 2013, the Moscow city court upheld that decision on appeal.

4.6 In the light of the above, the State party submits that the findings of the domestic courts refute the author's allegations of a violation of article 7 of the Covenant.

Author's comments on the State party's observations

5.1 On 2 April 2015, the author submitted comments on the State party's observations. He reiterated his submission that in the course of the extradition and refugee proceedings he had provided sufficient evidence to demonstrate that his extradition to Uzbekistan would expose him to a risk of torture. He notes that the refugee proceedings and the court review of the decision to extradite him were conducted in a purely formalistic manner and that his claim that he would be subjected to torture in Uzbekistan was not considered at all.

5.2 Furthermore, the author claims that the diplomatic assurances provided by Uzbekistan should have been discarded as unreliable because of the widespread and systematic use of torture there, which has been reported by United Nations bodies since 2003⁴ and by the European Court of Human Rights.⁵

5.3 The author claims that he should be considered a refugee "sur place".⁶ He explains that he submitted his application for asylum when he learned that a criminal case had been fabricated against him in Uzbekistan. As he indicated in his appeal to the Basmanyy district court, there was evidence that he had travelled to the Russian Federation on 14 January 2011, which was also indicated in the decision to decline his application. He was accused of having committed a crime in Uzbekistan between 18 and 22 February 2011, that is at a time when he was residing in the Russian Federation. The charges had therefore been fabricated against him in Uzbekistan and he feared that the investigation would be incomplete and biased. The State party disregarded those circumstances.

5.4 The author refers to paragraph 26 of the Supreme Court ruling of 14 June 2012, according to which the legality and substantiation of a decision to extradite within the meaning of article 463 of the Code of Criminal Procedure are established in the light of the circumstances that existed when such a decision was adopted. Although the author was extradited on 1 October 2012, a court hearing on his appeal against the decision to reject his application for refugee status only took place on 2 November 2012. He was therefore extradited to Uzbekistan while the proceedings on refugee status determination were pending against him in the Russian Federation.

⁴ Reference is made to E/CN.4/2003/68/Add.2, CCPR/C/UZB/CO/3 and CAT/C/48/D/444/2010, para. 13.6.

⁵ Reference is made to *Yakubov v. Russia*, application No. 7265/10, judgment of 8 November 2011, para. 99, and *Nizomkhon Dzhurayev v. Russia*, application No. 31890/11, judgment of 3 October 2013, paras. 132–133.

⁶ Reference is made to Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status*, 2011, paras. 94–95.

State party's further submissions

6.1 By a note verbale of 30 July 2015, the State party reiterated its previous submissions. It adds that the Office of the Prosecutor General of Uzbekistan has submitted an additional extradition request on an unspecified date, whereby the author was sought on aggravated murder and robbery charges under articles 97 (2), 25 and 164 (4) of the Uzbek Criminal Code. When deciding to extradite the author, the domestic authorities took into account the fact that Uzbekistan is a party to international treaties, including the Covenant and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the assurances provided by Uzbekistan that he would not be subjected to persecution, torture, violence or inhuman or degrading treatment; that his right to defend himself would be ensured, including through the assistance of a lawyer; and that he would be prosecuted in line with Uzbek legislation. The author's claim that he had an alibi for the period concerned was not examined during the extradition procedure since the determination of guilt is an exclusive prerogative of the Uzbek competent authorities. According to article 463 (6) of the Code of Criminal Procedure, in the course of extradition proceedings, the court shall not discuss whether the person concerned is guilty but shall restrict itself to checking whether the decision to extradite is in compliance with the legislation of the Russian Federation and the international treaties to which it is a party.

6.2 The author's claim that he would be subjected to torture and inhuman treatment and that the criminal proceedings against him in Uzbekistan are politically motivated are not supported by evidence; he might have made up these claims in order to avoid criminal liability in Uzbekistan. On the other hand, his claims were thoroughly examined by the competent authorities and courts in the course of the extradition and refugee proceedings and were not confirmed. The lack of substantiation of his claims is confirmed by the circumstances of his conviction and the penalty laid down in Uzbekistan that the Uzbek authorities communicated to the State party. On 6 June 2015, the Tashkent city court found the author guilty of murder, robbery and fraud under articles 97 (2), 25, 164 (4) and 168 (3) of the Uzbek Criminal Code and sentenced him to 18 years' imprisonment. His prison term was reduced by one quarter on three occasions, by virtue of amnesty. On 6 February 2015, he was transferred to another colony. He has been subject to regular medical check-ups. No health issues have been identified. Neither the author nor his relatives have submitted complaints throughout his prison term. The author has received 16 short and 6 long visits from relatives. No violence or psychological pressure has been used.

6.3 In the light of the above, the State party concludes that the author has been treated with humanity in Uzbekistan. He was transferred to a colony with a milder regime and has been serving his prison term there. There are no grounds to believe that after the author's extradition to Uzbekistan, he was subjected to torture or inhuman or degrading treatment or punishment.

Author's further submissions

7.1 On 25 October 2015, the author noted that the proceedings on refugee status determination and the court review of the decision to extradite him to Uzbekistan were done in a formalistic manner. He adds that the risk of ill-treatment in Uzbekistan was not duly assessed in the course of the extradition proceedings.

7.2 With reference to the annual report of Amnesty International for 2014–2015, the author emphasizes that the use of torture by law enforcement officials is widespread in Uzbekistan and that forced returnees are exposed to a real risk of torture and other forms of ill-treatment. The authorities continue to deny reports of torture and have failed to effectively investigate them, implement existing laws and safeguards and adopt new measures to prevent torture. There is no independent monitoring in place to inspect all places of detention and NGOs are prevented from conducting prison monitoring.⁷ The author stresses that this information is objective and independent, while the State party's submissions rely on information provided by Uzbekistan, which is an interested party.

⁷ Amnesty International, *The State of the World's Human Rights*, pp. 399–400.

7.3 With regard to the visits he has received while in prison, the author notes that the State party has failed to specify which authorities visited him and if they had the experience to effectively monitor the implementation of the assurances given by Uzbekistan, nor has the State party provided guarantees that those authorities could converse with the author without witnesses. There is no mechanism in place to allow for a complaint to be filed through visiting authorities or to allow them unrestricted access to prisons. No evidence has been provided to demonstrate that the State party's diplomats in Uzbekistan, if they have paid visits to the author in prison, have the necessary experience to monitor the implementation of the assurances given by Uzbekistan and that the author could converse with them confidentially and without witnesses. There is no agreement between the State party and Uzbekistan to allow for monitoring the assurances given by the latter, remedying violations, or identifying those responsible and bringing them to justice.

7.4 The author further refers to the findings of the European Court of Human Rights that diplomatic assurances by countries where, according to reliable sources, ill-treatment is used widely and systematically, cannot be considered a sufficient guarantee against the risk of ill-treatment.⁸ In such cases, the domestic courts should critically assess diplomatic assurances and other similar "information from official sources".⁹

7.5 Concerning the obligation of the Uzbek authorities to allow the State party's diplomats access to the author in prison, the author claims that such monitoring cannot be considered sufficient for the following reasons. First, the Office of the Uzbek Prosecutor General provided no information and guarantees as to the confidentiality of meetings between the author and Russian diplomats. Second, there is no effective mechanism for monitoring the author's health in prison, as the Uzbek authorities have provided no information regarding the availability of independent medical experts. Third, the State party's diplomats lack independence, as if they establish that the author has been subjected to ill-treatment, they would have to acknowledge that the State party has breached its international obligations. Fourth, the assurances provided by Uzbekistan do not contain any information as to its responsibility in the event of failure to comply with its assurances and its readiness to provide legal assistance to the State party in similar circumstances in the future does not cover such a responsibility.

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 it 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 that it is undisputed by the State party that the author has exhausted all effective domestic remedies available to him. In the circumstances, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 The Committee considers that the author has sufficiently substantiated his claims under articles 7 and 9 of the Covenant for the purposes of admissibility and proceeds to their examination on the merits.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

⁸ *Makhmudzhan Ergashev v. Russia*, application No. 49747/11, judgment of 16 October 2012, para. 74.

⁹ *Azimov v. Russia*, application no. 67474/11, judgment of 18 April 2013, para. 133.

9.2 The Committee notes the author's claim that his extradition from the Russian Federation to Uzbekistan would expose him to the risk of torture, contrary to article 7 of the Covenant.

9.3 The Committee recalls paragraph 12 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal¹⁰ and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.¹¹ In making this assessment, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.¹² The Committee further recalls its jurisprudence, according to which considerable weight should be given to the assessment conducted by the State party¹³ and that it is generally for the organs of States parties to the Covenant to review or evaluate the facts and evidence in order to determine whether such a risk exists, unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.¹⁴

9.4 The Committee observes that the author's claims that he would be subjected to torture if extradited to Uzbekistan were examined by the State party's Federal Migration Service in the course of the proceedings on refugee status determination and by the State party's courts in the course of the extradition proceedings, both of which found that he had not substantiated his claim that he would face a real, foreseeable and personal risk of being subjected to torture if returned to Uzbekistan. The Committee also notes that the author's fear of being subjected to torture relates to the alleged threats directed against his brother for having criticized the Uzbek authorities in 2009 and 2011 and to the general human rights situation in his country of origin, rather than to his specific case. The Committee notes that the author has not disputed that before his arrest on extradition charges in Moscow in 2011, he travelled freely back and forth between the Russian Federation and Uzbekistan on several occasions without encountering any issues with the Uzbek authorities, for instance while crossing the Uzbek border. The Committee also notes that, according to the information on file, the author and his brother were prosecuted on fraud-related charges in Uzbekistan, while nothing points to a political motivation for those charges. The Committee also notes the absence of any evidence that the decisions of the State party's authorities were manifestly unreasonable with respect to the allegations of the author. In the light of the above, the Committee cannot conclude that the information before it shows that the author's extradition to Uzbekistan exposed him to a real risk of inhuman treatment contrary to article 7 of the Covenant.

9.5 The Committee further notes the author's claim contained in his subsequent submission of 19 August 2012, to the effect that his detention pending extradition after 7 December 2011 was in violation of article 9 of the Covenant. The Committee notes the author's claim that he was continuously detained for over 10 months before his extradition. It also notes his claim that the extradition request was not submitted by Uzbekistan within the required time frame under the applicable legislation and that therefore his detention was against the law. The Committee also notes that the State party has not replied to those particular claims.

9.6 The Committee refers to its general comment No. 35 on liberty and security of person, in which it recalled that article 9 of the Covenant required that procedures for carrying out legally authorized deprivation of liberty should also be established by law and States parties should ensure compliance with their legally prescribed procedures (para. 23).

¹⁰ See, for example, *X. v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2.

¹¹ See, for example, *X. v. Denmark*, para. 9.2, and *X. v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

¹² *Ibid.*

¹³ See, for example, *Lin v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3, and *E.P. and F.P. v. Denmark* (CCPR/C/115/D/2344/2014), para. 8.4.

¹⁴ See, for example, *E.P. and F.P. v. Denmark*, para. 8.4.

9.7 The Committee notes that the author was arrested on 5 November 2011 in the Russian Federation under a search warrant issued against him by Uzbekistan and that his detention pending extradition was ordered by the Office of the Prosecutor of the Presnenskiy district in Moscow on 7 November 2011. The author's extradition was requested by the Office of the Uzbek Prosecutor General on 9 December 2011. Article 62 (1) of the Minsk Convention regulating extradition matters between the countries of the Commonwealth of Independent States provides that a person detained pending extradition must be released if the extradition request is not received within one month following his or her detention. The Committee notes that Uzbekistan has not ratified the Optional Protocol to the Minsk Convention which extended this period for up to 40 days following detention.

9.8 Furthermore, according to the material available to it, the Committee notes that the author's detention was not brought to the attention of a judge until 28 December 2011, when the district prosecutor requested that pending his extradition, the author's detention be extended by six months, until 5 May 2012. The Committee also notes that on 3 May 2012, the district court extended the author's detention for a further six months until 5 November 2012 and that the author was extradited to Uzbekistan on 1 October 2012.

9.9 The Committee further notes that in his appeal against the second extension of his detention, the author argued that the authorities provided no grounds that would justify it, such as the substantiation of exceptional complexity of the criminal charges against him or the existence of specific extradition measures to be taken by 5 November 2012; that there was no reference in article 109 of the Russian Code of Criminal Procedure to any circumstances justifying the continuous detention of a person after receipt of an extradition request in his or her regard and the issuance of the decision to extradite him by the Office of the Prosecutor General; that the extradition request from Uzbekistan was received over one month after the author's detention, in violation of the requirements of the Minsk Convention and the author's constitutional rights; and that therefore the author should have been released. The Committee notes that while upholding the decision on a second extension by the district court, the Moscow city court listed the grounds for extension in a summary manner, without providing further substantiation. The Committee observes that neither the domestic courts nor the State party addressed the concrete arguments against the extension of detention raised by the author's counsel. In the absence of any explanation by the State party, the Committee considers that due weight should be given to the author's allegations. Accordingly, in the circumstances of the present case, the Committee considers that the facts as submitted reveal a violation of the author's rights under article 9 of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the Russian Federation of the author's rights under article 9 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. That requires it to make full reparation to individuals whose Covenant rights have been violated. In the particular circumstances of the present case, the State party is under an obligation to provide adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring 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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy if 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 language of the State party.

Annex

Individual opinion of José Santos Pais (dissenting)

1. I regret not being able to share the Committee's decision, according to which the State party violated the author's rights under article 9 of the Covenant. The author was arrested on 5 November 2011 in the Russian Federation, pursuant to an international search warrant issued for him by Uzbekistan. His detention pending extradition was ordered by the Office of the Prosecutor of the Presnenskiy district, Moscow, on 7 November 2011, with reference to the decision of the Yakkasaray district court, Tashkent, of 23 February 2011 (see paragraphs 2.2 and 9.7 above). On 9 December 2011, the Office of the Uzbek Prosecutor General requested the author's extradition on charges of fraud (see paragraph 2.3 above), to "bring him to criminal responsibility" (see article 56 (2) of the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters).

2. On 28 December 2011, the Presnenskiy district prosecutor requested that the author's detention be extended for six months, until 5 May 2012, a request granted the same day by the Presnenskiy district court and upheld on 4 July 2012 by the Moscow city court. On 13 February 2012, the district court extended the author's detention for another six months, until 5 November 2012, a decision upheld by the Moscow city court on 4 July 2012. On 30 March 2012, therefore well within the last extension of the detention, the Office of the Russian Prosecutor General granted the extradition request, later confirmed by the Supreme Court on 13 August 2012 (see paragraph 2.3 above). The author was extradited on 1 October 2012 (see paragraph 2.6 above).

3. The author's detention pending extradition was initially ordered by the district prosecutor (see article 61 of the Minsk Convention), therefore before the extradition request was formally presented by the Uzbek authorities on 9 December 2011. According to the decision of the Committee (see paragraph 9.7 above), the extradition request was not received within one month following the author's detention but exceeded it by two days, thus violating article 61 of the Minsk Convention.

4. The Russian courts, including the Supreme Court, held however that the extradition request and the decision to extradite were both in compliance with the Minsk Convention and the Code of Criminal Procedure (see article 1 (3)). In fact, the Code allows for issuance by a prosecutor of a measure of restriction pending extradition, such as taking a person into custody, without confirmation by a court (see articles 91, 92, 97 (2) 108 and 466 (2)), and addresses further legal procedures of execution of extradition requested by a foreign State in conformity with an international treaty (see article 462), which in the present case is the Minsk Convention.

5. However, under article 463 (6): "In the course of the judicial proceedings the court shall not discuss the questions concerning the guilt of the person who has filed the complaint, but shall restrict itself to checking the correspondence between the decision on the extradition of the given person and the legislation and the international treaties of the Russian Federation" (see paragraph 6.1 above). The reasoning of the Committee that the authorities provided no grounds that would justify the extension of his detention, such as the substantiation of exceptional complexity of the criminal charges against him (see paragraph 9.9 above) does not therefore take into account either applicable Russian domestic provisions or the Minsk Convention (articles 56, 57 and 60), which foresee only a formal assessment of the criteria for granting detention pending extradition. In addition, the Committee's decision does not take into consideration the relevant international instruments on mutual legal assistance and extradition, based on the principles of international cooperation and respect for the domestic courts and jurisdiction of other countries, in line with the Russian Code of Criminal Procedure, extradition being granted or refused according to formal criteria, not substantive ones.

6. International instruments on extradition, such as the Model Treaty on Extradition, refer further to the need to observe the law of the requested State (see article 10 (1): "the requested State shall deal with the request for extradition pursuant to procedures provided

by its own law”). The same idea is found in the European Convention on Extradition (see article 22: “Except where this Convention otherwise provides, the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the requested Party”). The same applies to provisional arrest pending extradition, which is also to be decided according to the law of the requested State (see article 62 (2) of the Minsk Convention, article 9 (3) of the Model Treaty on Extradition and articles 16 (1) and 22 of the European Convention on Extradition).

7. Article 109 (2) and (3) of the Russian Code of Criminal Procedure allows for the extension of the author’s provisional arrest for a period of 6 months (“If it is impossible to complete the preliminary investigation within a term of up to two months and if there are no grounds for changing or for cancelling the measure of restriction, this term may be extended by the judge of the district court ... for a term of up to six months”) up to 18 months. Since extradition proceedings were ongoing, there seemed to be no justifiable reason to release the author before its conclusion.

8. Even if we accept that the extradition request was received after the time limit of one month following the author’s detention, the natural consequence of expiration of this delay would be the release of the author (see article 62 of the Minsk Convention) and then, once the extradition request had been received, he would be rearrested (see article 60 of the Minsk Convention and article 109 of the Russian Code of Criminal Procedure), in line with relevant international instruments (article 9 (5) of the Model Treaty on Extradition and article 16 (5) of the European Convention on Extradition), without any need for a substantive assessment of detention, as required by the Committee (see paragraph 9.9 above). I would therefore have concluded that article 9 of the Covenant was not violated.
