



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2526/2015*, **, ***

<i>Communication submitted by:</i>	Zhavlon Mirzakhodzhaev (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	10 September 2014 (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 9 January 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	6 November 2020
<i>Subject matter:</i>	Denial of fair trial
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Fair trial; presumption of innocence; trial in absentia; discrimination on the ground of ethnic origin
<i>Articles of the Covenant:</i>	2 (1), 14 (1), (2) and (3) (d) and (e), 17 (1) and 27
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Zhavlon Mirzakhodzhaev, a Kyrgyz citizen of Uzbek ethnicity born in 1964, currently in exile with his family.¹ He claims to be a victim of violation by Kyrgyzstan of his rights under articles 2 (1), 14 (1), (2) and (3) (d) and (e), 17 (1) and 27 of the Covenant. The Optional Protocol entered into force for Kyrgyzstan on 7 January 1995. The author is not represented by counsel.

* Adopted by the Committee at its 130th session (12 October–6 November 2020).

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

*** An individual opinion by Committee member Furuya Shuichi, partially joined by Committee members David Moore and Héléne Tigroudja (dissenting), and an individual opinion by Committee member Gentian Zyberi (dissenting), are annexed to the present Views.

¹ They were granted asylum in Switzerland.



Facts as submitted by the author

2.1 The author is an ethnic Uzbek who was living and working in the city of Osh in Kyrgyzstan. In 2010, he was the director of Mezon TV, an independent private broadcaster. The riots in April 2010 led to the ouster of the then President, Kurmanbek Bakiev, and to the establishment of a provisional Government. Political and inter-ethnic tension escalated. The author's television company continued its work during this period. According to the author, in cooperation with the Osh regional administration and the mayor of the city of Osh and civil society representatives, Mezon TV broadcast calls for inter-ethnic and political accord. In May and June 2010, numerous attacks against ethnic Uzbeks took place in the cities and regions of Osh and Jalalabad.²

2.2 Subsequently, the author was accused of being among those responsible for the inter-ethnic conflict. He submits that the main grounds for the criminal charges against him were the broadcasting by Mezon TV of a rally that took place on 15 May 2010 in the city of Jalalabad. The author affirms that he was neither physically present during the events of May and June 2010 in Jalalabad, nor did he participate in the organization of the rally, in which 6,000 to 7,000 people took part. During this period, he remained in Osh. According to the author, the material aired featured both Uzbek and Kyrgyz leaders speaking at the rally. This informational material lasted four to seven minutes and did not contain any journalistic commentary. It was the channel's professional responsibility to inform the public about events of general importance. The author was attending a conference in Bishkek between 5 and 10 June 2010. Due to the chaos in the city, he could not reach his home for two days. The channel's last broadcast was on 10 June 2010 at 4 a.m.; it featured the mayor of Osh and a representative of the Ministry of Internal Affairs, who called upon citizens to remain calm. In June 2010, the author received warnings and threats to his life over the phone on several occasions. Fearing for his and his family's life and safety, he left the country on an unspecified date in late June.

2.3 On 16 June 2011, Parliament passed a resolution on the information from the temporary parliamentary commission on investigation of the events of 2010. In violation of the principle of the presumption of innocence, paragraph 7 of the resolution listed the author as one of the organizers of the tragic events and as a participant in nationalistic and separatist activities. In direct interference with the judicial process, paragraph 21 of the resolution instructed the judiciary to conclude the judicial proceeding as a matter of urgency.

2.4 On 28 October 2011, unbeknownst to the author, Jalalabad City Court sentenced him in absentia to 14 years' imprisonment, finding him guilty of participation in separatist acts, and organization of mass disorder and killings, among other things. The author alleges that he was not informed of the trial date and was unable to secure his legal representation at the hearing. He learned about his sentence subsequently from the media.

2.5 The author appealed the sentence to Jalalabad Regional Court. His appeal was rejected on 31 January 2012.

2.6 On 24 March 2014, the author appealed under the supervisory review procedure to the Supreme Court. His appeal was rejected on 13 May 2014.

Complaint

3.1 The author claims a violation of his rights under article 14 (1) and (2) of the Covenant. The parliamentary resolution of 16 June 2011 had a negative impact on the courts, and prejudged the outcome of the trial, and thus his right to be tried by a fair and impartial tribunal

² Following the order by the mayor of Osh to shut down Mezon TV, the station never resumed broadcasting and Uzbek-language broadcasts have virtually disappeared in southern Kyrgyzstan. The author refers to relevant United Nations documents annexed to the communication: CERD/C/KGZ/CO/5-7 and CCPR/C/KGZ/CO/2. Notably, the Human Rights Committee, in its concluding observations on the second periodic report of Kyrgyzstan, was "concerned at reports that ... some of the Uzbek-language media were closed, including two independent Osh-based Uzbek-language television stations, Mezon TV and Osh TV, following the June 2010 events" (CCPR/C/KGZ/CO/2, para. 27).

was violated. As the resolution was adopted prior to the end of the author's trial, his right to be presumed innocent until proven guilty was also violated.

3.2 The author claims a violation of his rights under article 14 (3) (d) of the Covenant, as the first-instance court failed to notify him of the date of the trial and sentenced him in absentia. In this connection, he alleges a violation of article 14 (3) (e) of the Covenant, because he was not able to examine witnesses who testified against him or to have defence witnesses questioned.

3.3 The author alleges a violation of his rights under articles 2 (1) and 27 of the Covenant, claiming that the judgment was discriminatory against him due to his Uzbek ethnicity.

3.4 Finally, he claims a violation of his rights under article 17 of the Covenant, because as a result of the unfair trial against him, his honour was besmirched, he was labelled as a criminal and his family life was affected. He and his family had to escape abroad and are deprived of the possibility of return to their home country.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 15 July 2015, the State party provided its observations on admissibility and the merits, confirming that the author had exhausted all available domestic remedies with regard to his allegations. The State party contests a number of assertions made by the author as lies.

4.2 The State party points out that the author himself indicates that political and inter-ethnic tension escalated at the time when the events in question took place. Therefore, the author was fully aware of the gravity of the situation, which could easily result in further escalation of the conflict.

4.3 The State party submits that following the coup of 7 April 2010, many latent threats, such as regionalism, nationalism and separatism, significantly intensified. According to the State party, the Mezon TV channel repeatedly broadcast the rally in Jalalabad, and this repeated transmission undoubtedly served as a catalyst for the conflict. In this regard, the State party argues that the author has distorted the circumstances of this key episode in order to escape liability.

4.4 The State party refutes the author's affirmation that citizens of Uzbek ethnicity and citizens of Kyrgyz ethnicity took part in the rally, and argues that only ethnic Uzbeks were present. It also contests the assertion that the video of the rally was broadcast once and only lasted for four to seven minutes. It states that this false contention is easily refuted by ample evidence. Moreover, the version that was broadcast was more complete than the version available on the Internet, and featured scenes inciting inter-ethnic hatred, which have apparently been edited out of its online version.

4.5 The State party concludes that the author, while being fully aware of the potential consequences of his actions, contributed to the mobilization of Uzbek youth around separatist leaders, even though he continues to deny the obvious causal link between the events in Jalalabad and the conflict in Osh in June 2010.

4.6 The State party also asserts that the military and security forces participated in the conflict without taking the side of either rival party. The State party challenges the author's assertion that on 10 June 2010 at 4 a.m. there was a television broadcast featuring the mayor of Osh and a representative of the Ministry of Internal Affairs, calling for calm. It adds that the events in question only started late in the evening of the same day, making it impossible for the said television broadcast to be shown early in the morning. For the same reason, the State party denies the author's affirmation that he could not reach his home for two days.

4.7 The State party further denies the author's assertion that Parliament did not have the authority to make any conclusions prior to the judgment delivered by the courts. It clarifies that the legislature is fully entitled to discuss the outcome of the activities of the fact-finding commissions that it has established. At the same time, such discussions do not interfere with the independence of the judiciary, and the final verdict is pronounced exclusively by a court.

4.8 The State party argues that citizens of Uzbek ethnicity enjoy a full range of political, social and cultural rights within its territory. Any accusations of nationalism against the authorities are thus unsubstantiated.

4.9 At the same time, the State party points out that the calls for separatism by certain leaders of the Uzbek community are criminally punishable. The author, as a director of Mezon TV, was among the persons who had entered into a criminal conspiracy with Kadyrjan Batyrov (the founder of the People's Friendship University). In breach of article 23 of the Law on the Media, the author actively supported Mr. Batyrov in the realization of his criminal intent (notably the incitement of ethnic and interregional tension, mass disorder, and seizure and destruction of property). Local residents attempted to halt these criminal activities in May 2010 and were severely attacked by Mr. Batyrov's supporters. This resulted in the escalation of ethnic conflicts in the city of Osh and in the Jalalabad and Osh regions, with many killed or wounded.

4.10 The author was among those that subsequently became subject to criminal proceedings who, while hiding, were found guilty in absentia. During the trial, the author was represented by counsel, and the defence did not file any motion or complaint regarding any violation of due process or of the author's procedural rights. The author's guilt was fully established. The State party observes that due to the extensive coverage of the trial by the media, the author must have learned about his sentence on the news, which is corroborated by the fact that his counsel appealed the decision to the higher courts. The State party concludes that, although the higher court upheld the lower court's decision, the author's procedural rights were fully guaranteed at all stages of the proceedings. In addition, the author can appeal if new circumstances are revealed.

4.11 The State party denies the author's allegation that his sentence reveals discrimination on the grounds of ethnicity. In this regard, the State party informs the Committee that only 51 per cent of those held criminally liable following the events of June 2010 are ethnic Uzbeks.

4.12 Finally, the State party reiterates its position that consideration of the author's communication on the merits would be inappropriate as all charges against the author have been fully established by the courts and the present communication is unsubstantiated.

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

5.1 On 2 December 2015, the author challenged the State party's observations. He claims that he did not misrepresent the circumstances of the events concerned.

5.2 As regards the State party's assertion that the repeated television broadcasting of a rally was among the factors that triggered the subsequent conflict, the author reiterates that it was only broadcast once, that the broadcast lasted for four to seven minutes and that it did not include any commentaries.

5.3 The author denies the allegation that only ethnic Uzbeks participated in the rally of 15 May 2010. This can be corroborated by the respective video materials and the witnesses' statements. The author points out, in particular, that during the rally, the head of the Jalalabad region, Mr. Asanov, an ethnic Kyrgyz, delivered a 13-minute speech in the Kyrgyz language.

5.4 The author also claims that no episode could have been edited out of the broadcast after it was aired on television and before it was published online, because officers of the Jalalabad prosecutor's office seized the original broadcast during a search. He further explains that a number of sensitive scenes had in fact been cut out by the editor before the video was broadcast. Moreover, there is no connection between a speech made by Mr. Batyrov to the Uzbek population in the village of Kyzyl Kyshtak and the activities of Mezon TV, because the latter did not record this particular event and did not broadcast it. The author also denies that he or his colleagues have ever willingly contributed to the mobilization of Uzbek youth around separatist leaders. They only sought to carry out their duty of informing the public about what was happening. The author is of the view that Mezon TV's broadcasts were rather aimed at calming the local population and warning of the potential dangers of such incidents.

5.5 The author reiterates that an intervention by the mayor of Osh and a representative of the Ministry of Internal Affairs was broadcast, and also reiterates his inability to reach his home for two days. According to the author, due to an unintentional typing error, the description of the events mentioned the date of 10 June, but in fact the broadcast took place on 11 June at 4 a.m., and he could not return to his home after that date.

5.6 The author reiterates that Parliament violated the constitutional provisions and domestic law by claiming that he was guilty before any court decision was pronounced. He also clarifies that he has never blamed the Kyrgyz population or the Kyrgyz authorities for being nationalists or chauvinists, but he had only been referring to particular officials and groups.

5.7 He further refers to the concluding observations adopted by the Committee on the Elimination of Racial Discrimination and the Human Rights Committee.³ According to him, they provide a different account of the situation of inter-ethnic relations in the State party (notably the position of the Uzbek population) than that asserted by the State party in its reports to the Committee. The author also refers to the report of the Independent International Commission of Inquiry into the Events in Southern Kyrgyzstan, which he claims confirms that there were no separatist demands during the events of June 2010.

5.8 The author denies the State party's allegations concerning the existence of a criminal conspiracy between him and Mr. Batyrov, who reportedly financed Mezon TV. He states that all contentions of this kind are false, because Mr. Batyrov has never provided any financial or logistical resources to the author's television company, and there has never been any criminal association between them.

5.9 The author also addresses the procedural irregularities that allegedly took place during the trial. According to the author, his criminal case was opened on 19 May 2010, that is, 25 days before he left the country. However, the investigator failed to file the charges against him in the presence of his counsel and to inform him of their nature. Under the Code of Criminal Procedure, the participation of the defendant during a trial by a court of first instance is generally deemed obligatory. The author refers to the State party's argument that, as acknowledged by the Constitutional Chamber of the Supreme Court, it is permissible to conduct the trial and sentence a defendant in absentia provided that the latter resides outside the State party and declines to appear in court. However, this conclusion was made by the court on 21 February 2014 (i.e. after the pronouncement of his sentence). Moreover, he never declined to appear in court and never hid from the authorities. The author only found out about his conviction through the Internet and news in the media, which made it impossible for his counsel to prepare for the proceedings at the higher courts. In addition, he later discovered that his counsel was being heavily pressured in the course of the judicial proceedings, and was even beaten on 21 January 2012.

5.10 Finally, the author refers to the concluding observations on the fifth to seventh periodic reports of Kyrgyzstan, adopted by the Committee on the Elimination of Racial Discrimination, in which the Committee noted that Uzbeks had been the main victims of the June 2010 events and had been the most prosecuted and condemned.⁴

Issues and proceedings before the Committee

Consideration of admissibility

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

³ CERD/C/KGZ/CO/5-7 and CCPR/C/KGZ/CO/2. Notably, the Human Rights Committee was "concerned at reports that ... some of the Uzbek-language media were closed, including two independent Osh-based Uzbek-language television stations, Mezon TV and Osh TV, following the June 2010 events".

⁴ CERD/C/KGZ/CO/5-7, para. 6.

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 author's claim that the State party violated his rights under article 17 (1) of the Covenant because his reputation had been discredited as he had been labelled a criminal and his family life had been affected. The Committee observes, however, that according to the information available, these claims do not appear to have been raised in the domestic proceedings. This part of the communication, raising issues under article 17 (1) of the Covenant, is accordingly declared inadmissible for failure to exhaust all domestic remedies in accordance with article 5 (2) (b) of the Optional Protocol.

6.4 The Committee notes the claim by the author that he has exhausted the available effective domestic remedies, which was confirmed by the State party. Accordingly, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met with regard to his remaining claims.

6.5 The Committee notes that the author claims a violation of his rights under article 2 (1) of the Covenant. It recalls its jurisprudence to the effect that the provisions of article 2 of the Covenant, which lay down general obligations for States parties, cannot, in and of themselves, give rise to a claim in a communication under the Optional Protocol.⁵ The Committee therefore considers that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.6 The Committee notes the author's claim that he was not notified about his trial and was sentenced in absentia, which violated his rights to be tried in his presence and to examine witnesses against him as provided for in article 14 (3) (d) and (e) of the Covenant. The Committee recalls that under article 14 (3), everyone is entitled to be tried in his or her presence and to defend himself or herself in person or through legal assistance. This provision and other requirements of due process enshrined in article 14 cannot be construed as invariably rendering proceedings in absentia impermissible, irrespective of the reasons for the accused person's absence.⁶ Indeed, proceedings in absentia may in some circumstances be permissible in the interest of the proper administration of justice: for example, when the accused person, although informed of the proceedings sufficiently in advance, declines to exercise his or her right to be present. The Committee has held in the past that a trial in absentia is compatible with article 14 only when the accused has been summoned in a timely manner and informed of the proceedings against him or her.⁷ In order for the State party to comply with the requirements of a fair trial when trying a person in absentia, it must show that these principles were respected.⁸

6.7 The Committee acknowledges, however, that there must be certain limits to the efforts that can reasonably be expected of the competent authorities with a view to establishing contact with the accused.⁹ The State party has not denied that the author was tried in absentia on the basis of domestic law which allows for in absentia trials if defendants are outside of Kyrgyzstan and avoid appearing in court. The Committee notes the author's submission that he left Kyrgyzstan with his family in mid-June 2010 (according to the author, 25 days after the criminal investigation was opened on 19 May 2010), and that he was not informed about the trial and learned of the verdict only through the mass media. However, the Committee observes that the author was legally represented and that no information in the file suggests that his counsel had no contact with him throughout the criminal process. In these

⁵ See, for example, Human Rights Committee, *M.G.B. and S.P. v. Trinidad and Tobago*, communication No. 268/1987, para. 6.2; *Bazarov v. Belarus* (CCPR/C/111/D/1934/2010), para. 6.3; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *Khudayberdiev v. Kyrgyzstan* (CCPR/C/127/D/2522/2015), para. 9.4.

⁶ Human Rights Committee, *Mbenge v. Zaire*, communication No. 16/1977, para. 14.1; and *Khudayberdiev v. Kyrgyzstan*, para. 9.5.

⁷ *Ibid.*

⁸ Human Rights Committee, *Maleki v. Italy*, communication No. 699/1996, para. 9.3; and *Khudayberdiev v. Kyrgyzstan*, para. 9.5.

⁹ *Salikh v. Uzbekistan* (CCPR/C/95/D/1382/2005), para. 9.5; and *Khudayberdiev v. Kyrgyzstan*, para. 9.6.

circumstances, when the author in the initial stages of the criminal proceedings was only a witness and not an accused person, and moved with his immediate family to a different country, the Committee considers it would be unreasonable to require the State party to establish contact with a legally represented author after he and his family had gone into hiding and subsequently had left the country. These factors, taken together, lead the Committee to conclude that, under these specific circumstances, the author has failed to provide sufficient substantiation of his claim of violations of article 14 (3) (d) and (e) of the Covenant, and that these claims are therefore inadmissible under article 2 of the Optional Protocol.

6.8 With regard to the author's claim of a violation under article 27 of the Covenant, the Committee notes that the author has failed to provide sufficient information to enable the Committee to consider that the facts of the communication raise issues under this article of the Covenant. Accordingly, the Committee considers that the author's claim concerning this part of the communication is not substantiated and is inadmissible under article 2 of the Optional Protocol.

6.9 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, his remaining claims raising issues under article 14 (1) and (2) of the Covenant. Accordingly, it declares the communication admissible in that regard and proceeds with its consideration of the merits.

Consideration of the merits

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

7.2 The Committee notes the author's claim that the resolution passed by the Parliament of Kyrgyzstan on 16 June 2011 denied him any prospects of a fair trial and the presumption of innocence, because it influenced the outcome of the trial, which violated his rights under article 14 (2) of the Covenant, and consequently violated his right under article 14 (1) to be judged by a fair and impartial tribunal. The Committee also notes the State party's argument that the legislative branch of the Government has the power to discuss the results of the work of its fact-finding commissions and that discussions in Parliament should never be interpreted as interference in the independent work of the judicial branch because final decisions are always taken by the courts. The Committee recalls its jurisprudence¹⁰ as reflected in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, according to which the presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt and requires that persons accused of a criminal act must be treated in accordance with this principle. The Committee observes that while the text of the parliamentary resolution describes the author and his co-defendants as organizers and perpetrators of the tragic events in Osh and Jalalabad of May and June 2010, it also recommends that the Supreme Court of Kyrgyzstan ensure full transparency in criminal proceedings against persons accused of committing crimes in connection with the events in question and that relatives of defendants and representatives of international organizations be allowed access to the courtroom during the trial. The Committee notes, in this respect, that the author has not provided any information indicating how the resolution – a political document – could have affected the criminal proceedings in his case. The Committee concludes that the facts as presented to it by the author do not allow it to find a violation of his rights under article 14 (2). Consequently, the Committee also finds no violation of his right under article 14 (1) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it does not disclose a violation by the State party of article 14 (1) and (2) of the Covenant.

¹⁰ *Kovalev et al. v. Belarus* (CCPR/C/106/D/2120/2011), para. 11.4; *Mwamba v. Zambia* (CCPR/C/98/D/1520/2006), para. 6.5; and *Khudayberdiev v. Kyrgyzstan*, para. 10.2.

Annex I

Individual opinion of Committee member Furuya Shuichi, partially joined by Committee members David Moore and H el ene Tigroudja (dissenting)

1. Mr. Furuya and Mr. Moore are unable to concur with the view adopted by the Committee that the author's claim of violation of article 14 (3) (d) and (e) concerning his trial in absentia is inadmissible (para. 6.6), and Mr. Furuya and Ms. Tigroudja disagree with its conclusion that the resolution of Parliament which describes the author and his co-defendants as organizers and perpetrators of the tragic events in Osh and Jalalabad of May and June 2010 does not constitute a violation of article 14 (2) (para. 7.2).

Trial in absentia

2. According to article 14 (3) (d) of the Covenant, everyone is entitled to be tried in his presence and to defend himself in person or through legal assistance. On the other hand, as the present Views point out, criminal proceedings in the absence of the accused may in some circumstances be permissible in the interest of the proper administration of justice, that is, when the accused person, although informed of the proceedings sufficiently in advance, declines to exercise their right to be present. However, it is important to note that a trial in the presence of the accused is the principle, while a trial in absentia is the exception.

3. Therefore, the Committee has emphasized that a trial in absentia is compatible with article 14 only when the accused was summoned in a timely manner and informed of the proceedings against him. This is because the effective exercise of the rights under article 14 presupposes that the necessary steps should be taken to inform the accused beforehand about the proceedings against him (art. 14 (3) (a)). Judgment in absentia requires that, notwithstanding the absence of the accused, all due notification has been made to inform him of the date and place of his trial and to request his attendance. Otherwise, the accused is not given adequate time and facilities for the preparation of his defence (art. 14 (3) (b)) and cannot defend himself through legal assistance of his own choosing (art. 14 (3) (d)), nor does he have the opportunity to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf (art. 14 (3) (e)).

4. Since a trial in absentia is the exception to article 14 (3) (d), it is incumbent upon a State party to demonstrate whether it has taken necessary steps to notify the accused of the legal proceedings. The Committee has acknowledged that there must be certain limits to the efforts that can reasonably be expected by the competent authorities with a view to establishing contact with the accused. However, even if there are certain difficulties in contacting the accused, the State party is still obliged to demonstrate that it has actually made sufficiently proactive efforts to inform the accused person of the criminal charges and to notify him or her about the date and place of the criminal proceedings.

5. In the present case, however, the author alleged that the State party had not taken any measures to contact him before the criminal proceedings commenced, and the State party did not rebut this allegation. In fact, the State party has provided no information to the Committee with regard to the concrete steps it took to inform the author of the charges against him or to notify him of the court proceedings.

6. Under these circumstances, Mr. Furuya and Mr. Moore have to conclude that the author's claim is admissible and the trial that the State party commenced without the presence of the author constitutes a violation of his rights under article 14 (3) (d).

Parliamentary resolution

7. According to the Committee's general comment No. 32 (2007), the presumption of innocence under article 14 (2) requires that a person accused of a criminal act must be treated in accordance with this principle. In this respect, the obligation deriving from the presumption of innocence goes beyond the conduct of the concerned judge and prosecutor during the criminal proceedings. In a broader social context, a suspect and accused shall be

presumed innocent until he or she is found guilty by a competent court. For this purpose, the general comment points out that all public authorities have a duty to abstain from making public statements affirming the guilt of the accused and the media should avoid news coverage undermining the presumption of innocence.

8. In our view, therefore, in order to find a violation of the presumption of innocence, it does not matter whether, for instance, statements by public authorities or news coverage by the media could actually affect the outcome of criminal proceedings. The treatment suggesting the guilt of a suspect or accused as such may constitute a violation of the presumption of innocence.

9. The present Views find that “the author has not provided any information indicating how the resolution – a political document – could have affected the criminal proceedings in his case”, and then concludes that there was no violation of his right under article 14 (2). However, the crucial matter in the present case is not whether the resolution affected the author’s criminal proceedings, but whether it suggested his guilt. In this regard, it is to be noted that the resolution explicitly mentions the author by name as one of the perpetrators of the events with which he was criminally charged. Even if a parliament has the power to discuss the result of the work of its fact-finding commissions, it still is under an obligation as an organ of the State party to treat individuals in accordance with the principle of the presumption of innocence.

10. Accordingly, Mr. Furuya and Ms. Tigroudja have to conclude that the adoption of the said resolution by Parliament, which clearly suggested the guilt of the author before a competent court had so decided, constitutes a violation of his right under article 14 (2).

Annex II

Individual opinion of Committee member Gentian Zyberi (dissenting)

1. Regrettably, I do not agree with the Committee's finding that the author's claim of violation of article 14 (3) (d) concerning his trial in absentia is inadmissible (para. 6.6). Also, contrary to the Committee's Views (para. 7.2), I argue that the resolution of Parliament which describes the author and his co-defendants as organizers and perpetrators of the tragic events in Osh and Jalalabad of May and June 2010 does constitute a violation of the presumption of innocence under article 14 (2).

Trial in absentia

2. Article 14 (3) (d) affirms that a person accused of an offence has a right to be present at trial. The Committee's general comment No. 32 (2007) explains that trials in absentia "are only compatible with article 14, paragraph 3 (d) if the necessary steps are taken to summon accused persons in a timely manner and to inform them beforehand about the date and place of their trial and to request their attendance".¹ In the case at hand, the State party merely claims that the author was hiding (para. 4.10), while the author asserts that he did not go into hiding and from the moment his criminal case was opened on 19 May 2010 until the moment he left the country, i.e. 25 days later, he continued working as usual in his office in Osh and attended a conference in Bishkek (para. 5.9).

3. While there are exceptions to the right to be present at trial, and there are limits to what can be expected of the competent authorities to establish contact with an accused, the Committee has held that "judgment in absentia requires that, notwithstanding the absence of the accused, all due notification has been made to inform him of the date and place of his trial and to request his attendance".² Unfortunately, the State party has provided no information to the Committee with regard to the concrete steps it took to inform the author of the charges against him or to notify him of the court proceedings. In the absence of such information from the State party, the trial in absentia constitutes a violation of the author's rights under article 14 (3) (d).

Parliamentary resolution of 16 June 2011

4. Article 14 (2) provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. The Committee's general comment No. 32 (2007) explains that "the presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle".³ Consequently, it is "a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused".⁴ This general obligation imposed on public authorities is important to ensure utmost respect for the fundamental principle of the presumption of innocence.

5. In the case at hand, the resolution by Parliament explicitly mentions the author by name as one of the perpetrators of the events with which he was criminally charged (para.

¹ See para. 36.

² Human Rights Committee, *Mbenge v. Zaire*, communication No. 16/1977, para. 14.1; *Osiyuk v. Belarus* (CCPR/C/96/D/1311/2004), para. 8.2; and Human Rights Committee, *Maleki v. Italy*, communication No. 699/1996, para. 9.3.

³ See para. 30.

⁴ Human Rights Committee, general comment No. 32 (2007), para. 30; and Human Rights Committee, general comment No. 13 (1984), para. 7. See, inter alia, *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997), paras. 3.5 and 8.3; and *Kovalev et al. v. Belarus* (CCPR/C/106/D/2120/2011), para. 11.4.

7.2). This fact should suffice for finding a violation of the presumption of innocence under article 14 (2). Regrettably, the Committee reverses the burden of proof, by expecting the author to provide information indicating how the resolution – a political document – could have affected the criminal proceedings in his case (para. 7.2). This approach goes against the sense of article 14 (2) of the Covenant and general comment No. 32 (2007): contrary to what the general comment requires, a public statement has been issued which prima facie prejudices the presumption of innocence of an accused, therefore it is for the State party to show that such conduct by its organs or officials has not negatively affected the presumption of innocence and the criminal proceedings.

6. Hence, the adoption of the said resolution by Parliament, which clearly suggested the guilt of the author before a competent court had had the chance to assess the evidence and conclude that this was the case, constitutes a violation of his right to be presumed innocent under article 14 (2).
