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# International Covenant on Civil and Political Rights

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## Human Rights Committee

One hundredth session

11 to 29 October 2010

### Views

#### Communication No. 1633/2007

<u>Submitted by:</u>	Khilal Avadanov (not represented by counsel)
<u>Alleged victims:</u>	The author and his wife, Simnara Avadanova
<u>State party:</u>	Azerbaijan
<u>Date of communication:</u>	31 July 2007 (initial submission)
<u>Document references:</u>	<ul style="list-style-type: none"><li>- Special Rapporteur's rule 97 decision, transmitted to the State party on 4 December 2007 (not issued in document form)</li><li>- CCPR/C/96/D/1633/2007 – Decision on admissibility, adopted on 28 July 2009</li></ul>
<u>Date of adoption of Views:</u>	25 October 2010

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\* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Failure to prosecute a private individual who harmed the author's family and failure to conduct an adequate investigation into the allegations of police ill-treatment of the author and his wife.
<i>Substantive issues:</i>	Torture, cruel, inhuman or degrading treatment or punishment; arbitrary interference with the family; protection of the family; right to equal protection of the law.
<i>Procedural issue:</i>	<i>Ratione temporis</i> , exhaustion of domestic remedies.
<i>Articles of the Covenant:</i>	7; 17; 23, paragraph 1; and 26.
<i>Articles of the Optional Protocol:</i>	1 and 5, paragraph (2)(b).

On 25 October 2010, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1633/2007.

[Annex]

## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (one hundredth session)**

concerning

#### **Communication No. 1633/2007\*\***

Submitted by: Khilal Avadanov (not represented by counsel)

Alleged victims: The author and his wife, Simnara Avadanova

State party: Azerbaijan

Date of communication: 31 July 2007 (initial submission)

Date of Admissibility decision: 28 July 2009

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

Meeting on 25 October 2010,

Having concluded its consideration of communication No. 1633/2007, submitted to the Human Rights Committee by Mr. Khilal Avadanov in his own name and on behalf of Mrs. Simnara Avadanova under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1.1 The author of the communication, Mr. Khilal Avadanov, an Azerbaijani national born in 1950, is the husband of Mrs. Simnara Avadanova, also an Azerbaijani national born in 1953. On 14 March 2006, he and his wife were granted refugee status in Greece, where they are currently living. The author acts on his own behalf and on behalf of his wife, and claims a violation by Azerbaijan of his and his wife's rights under article 7; article 17; article 23, paragraph 1, and article 26, of the International Covenant on Civil and Political Rights. The author is unrepresented. The Optional Protocol entered into force for Azerbaijan on 27 February 2002.

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmed Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Motoc, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

1.2 On 19 May 2009, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, decided to examine the admissibility of the communication separately from the merits.

### **Factual background**

2.1 On 27 October 1999, a part of the author's house in Baku, Azerbaijan, was demolished by his nephew, Mr. B.G., allegedly upon instigation of the author's sister. In the course of the same incident, Mr. B.G. allegedly verbally insulted and beat the author's wife. The same day, she complained about the insults, beatings and demolition of the property to the 29th police division of the Yasamal District Police Department of Baku (29th police division) and requested that criminal proceedings be opened against Mr. B.G. According to a forensic medical examination of the author's wife on 28 October 1999, she sustained light bodily injuries that did not result in short-term damage to her health.

2.2 On 10 November 1999, an investigator at the 29th police division, Mr. T.G., opened criminal proceedings against Mr. B.G. under article 105, part 2 (deliberate infliction of less serious bodily injury), and article 207, part 2 (hooliganism), of the Criminal Code then in force, on the basis of the testimony of the author, his wife and other witness statements. The investigator sent the case to the Yasamal District Prosecutor's Office for approval and subsequent transmittal to the Yasamal District Court. On an unspecified date, the Deputy Prosecutor of the Yasamal District Prosecutor's Office returned the case back to the 29th police division. Subsequently, on an unspecified date, the case was transmitted to the Yasamal District Court. This time, criminal proceedings against Mr. B.G. were opened only under article 106, part 1 (deliberate infliction of light bodily injury), of the Criminal Code.

2.3 On 14 December 1999, the Yasamal District Court discontinued criminal proceedings against Mr. B.G. under article 106 of the Criminal Code, on the basis of an amnesty law adopted by the Milli Majlis (Parliament) on 10 December 1999. On 17 May 2000, the Baku City Prosecutor lodged an objection against the decision of the Yasamal District Court and, on 9 June 2000, its decision was revoked by the Baku City Court, which ordered a new examination of the case by the same court of first instance. On 25 August 2000, the Yasamal District Court dismissed the request to open criminal proceedings against Mr. B.G. and discontinued the proceedings for a second time. It established that, although there were constituent elements of *corpus delicti* set out in article 106, part 1, of the Criminal Code in Mr. B.G.'s actions, the incident was of a domestic nature, bodily injuries sustained by the author's wife did not result in short-term damage to her health and the author's wife had, without a valid reason, failed to appear in court.

2.4 On an unspecified date, the author's wife appealed the decision of the Yasamal District Court of 25 August 2000 to the Court of Appeal of Azerbaijan (Court of Appeal). On 30 November 2000, the Court of Appeal revoked the decision of the lower court, because under articles 108 and 109 of the Criminal Procedure Code, the Yasamal District Court had to initiate criminal proceeding prior to their discontinuance, and because there was no material to suggest that the author's wife and Mr. B.G. had been duly summoned to appear in court on the day in question. The Court of Appeal nonetheless dismissed the request to open criminal proceedings against Mr. B.G., applying article 13 of the amnesty law of 10 December 1999. This decision became executory.<sup>1</sup>

2.5 On 12 December 2000, the author's wife appealed the decision of the Court of Appeal to the Judicial Chamber for Criminal and Administrative Cases of the Supreme Court. On 11 January 2001, the Deputy Chairperson of the Supreme Court replied that the

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<sup>1</sup> See, article 407.2. of the Criminal Procedure Code of the Republic of Azerbaijan.

cassation appeal was unfounded and that there were no grounds to lodge an objection against the decision of the Court of Appeal. On 2 February 2001, the author submitted a complaint to the Chairperson of the Supreme Court. On 21 February 2001, the Deputy Chairperson of the Supreme Court replied that the author's wife could file a cassation appeal to the Judicial Chamber for Criminal and Administrative Cases of the Supreme Court, against the decision of the Court of Appeal.

2.6 On 27 June 2001, the Judicial Chamber for Criminal and Administrative Cases of the Supreme Court upheld the decision of the Court of Appeal and dismissed the cassation appeal of the author's wife. The author claims that, during the hearing, the prosecutor stated that there were constituent elements of *corpus delicti* set out in article 128 (deliberate infliction of light damage to health), article 186, part 2 (deliberate destruction or damage of property), and article 221, part 2 (hooliganism), of the new Criminal Code in Mr. B.G.'s and his mother's actions. Fearing, however, that a decision not in their favour would prompt Mr. B.G. and his mother to commit a more serious crime, the prosecutor allegedly suggested upholding the decision of the Court of Appeal.

2.7 On 2 August 2001, the author and his wife filed a supplementary cassation complaint with the Plenum of the Supreme Court, requesting that the decision of the Judicial Chamber for Criminal and Administrative Cases of the Supreme Court of 27 June 2001 be revoked, and that a new examination of the case by the appellate instance be ordered. On 12 September 2001, this request was dismissed by the Chairperson of the Supreme Court.

2.8 On 22 July 2003, the author submitted a complaint to the Constitutional Court. On 21 August 2003, the Head of the Department on the Reception of Citizens and Examination of Petitions of the Constitutional Court replied that, although article 130 of the Constitution of Azerbaijan allowed citizens to apply directly to the Constitutional Court, the law then in force did not yet define the procedure for the examination of complaints submitted by citizens. For this reason, the author's complaint could not be acted upon yet by the Constitutional Court.

2.9 The author's disagreement with the way in which the State party authorities and courts handled his case prompted him to seek redress before the European Court of Human Rights (ECHR). On 28 October 2003, the author's complaint against Azerbaijan to the ECHR dated 18 September 2003, was registered as case No. 34014/03. The registration letter was received by the author on 4 November 2003.

2.10 The author claims that the officers of the 29th police division to which the author's wife initially complained about Mr. B.G. somehow learned that the complaint about their actions was registered by the ECHR and requested that he give the registration letter to them. The author refused to do so. For approximately 40 days, he lived at his friends' places in an attempt to avoid any encounter with the police. On 10 December 2003, he was allegedly caught at home by the police. He claims that the police severely beat him, smashed his teeth, leaving scars on his nose and under his left eyebrow. In the end, he was brought to the police division where he was allegedly subjected to electric shock. While subjected to torture, he was told by the police that he was being punished for daring to "make public the secrets about methods of work of Azerbaijani law enforcement and judicial systems". The author claims that, on the same day, four police officers raped his wife in his presence. While the author had never before seen three of the police officers, he recognised the fourth officer as being the district inspector. The author was also threatened by the same police officers that the next one to be raped would be his daughter, but the police did not succeed in finding her. The author states that the police's actions were not recorded anywhere, as the officers were trying to absolve themselves from any responsibility.

2.11 In the early morning of 11 December 2003, the author was allegedly transported from the police division in a car to the outskirts of Baku and left at a waste ground. He did not go to the hospital for a medical examination and a certificate because, according to the author, any forensic medical examination had to be conducted in the presence of a police officer. Neither he nor his wife raised the allegations of torture and rape before the State party authorities or courts, allegedly for fear of reprisal and because, in any case, the police would collectively defend itself since its reputation as a whole was at stake.

2.12 Allegedly on the advice of their defence lawyer, the author and his wife left Azerbaijan on 3 January 2004. He was informed by the lawyer that if he stayed in Azerbaijan, he would be physically “exterminated” by the police. On 8 January 2004, the author and his wife reached the Netherlands, surrendered to the authorities and applied for asylum.

2.13 On 20 January 2004, the author informed the ECHR about the fact that he had to leave Azerbaijan and provided his contact details in the Netherlands. In mid-February 2004, he was informed that, on 6 February 2004, a Committee of three judges of the Court declared his application No. 34014/03 inadmissible *ratione temporis*, pursuant to article 35, paragraph 3, of the European Convention on Human Rights because the facts of the case in question occurred prior to the entry into force of the Convention in respect for Azerbaijan.

2.14 On an unspecified date, the Dutch authorities rejected the asylum applications of the author and his wife on the grounds that they had entered the Schengen territory with visas issued by Greek authorities. On an unspecified date, they were deported to Greece under the Dublin Regulation.

2.15 On 24 May 2005, the author underwent a medical and clinical examination by the Medical Director of the Medical Rehabilitation Centre for Torture Victims in Athens. The medical report issued on 20 July 2005 states that, according to the author, he was arrested more than 50 times by Azerbaijani police in Baku, where he lived with his family, during the period of 1999 to 2003. He claimed to have been subjected to beatings on his head and chest, as a result of which he has a 6 cm horizontal scar and another 4 cm vertical scar on his eyebrow from the beatings. A total of 14 teeth, 6 in the upper jaw and 8 in the lower jaw, were broken as a result of the beatings. The author also claimed to have been subjected to electric shock. He described how the police tied him up to an iron chair, poured water over his body, connected electrodes to the iron chair and switched on the current. He alleged to have been subjected to torture four times, while his wife was raped by four police officers. The report concludes that the author was a torture victim and that he continued to suffer from physical and psychological effects of the torture.

2.16 On 14 March 2006, the author and his wife were granted refugee status in Greece.

### **The complaint**

3. The author claims a violation by Azerbaijan of his wife’s rights and of his own rights under article 7; article 17; article 23, paragraph 1, and article 26, of the Covenant.

### **State party's observations on admissibility**

4.1 On 2 February 2009, the State party confirms the facts summarised in paragraphs 2.1 - 2.7 above and challenges the admissibility of the communication.

4.2 Firstly, the State party submits that all the events related to the case in which the author and his wife were requesting the authorities to open criminal proceedings against Mr. B.G. occurred prior to the State party's accession to the Optional Protocol on 27 November 2001 and its entry into force for it.

4.3 Secondly, as to the author's allegations of having been subjected to torture by the police in Azerbaijan, the State party argues that, contrary to the requirements of article 5, paragraph 2(b), of the Optional Protocol, this issue was never raised in the domestic courts. It concludes that the communication should be declared inadmissible for failure to exhaust all available domestic remedies.

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

5.1 In his comments of 4 March and 14 May 2009, the author submits that in the State party's observations on admissibility, reference is made only to article 106, part 1, of the Criminal Code, whereas the author's wife and their lawyer requested the authorities to open criminal proceedings against Mr. B.G. under three provisions of the Criminal Code. In the author's opinion, had the criminal proceedings been opened under three articles of the Criminal Code, it would have subsequently been impossible to relieve Mr. B.G. from responsibility on the basis of the amnesty law.

5.2 As to the State party's *ratione temporis* argument, the author submits that, in fact, his complaint to the Constitutional Court and the Court's reply are respectively dated 22 July 2003 and 21 August 2003.

5.3 With regard to the State party's argument that the author's torture allegations were never raised in the domestic courts, the author refers to his initial submission of 31 July 2007 in which he explained why it was impossible for him to exhaust domestic remedies prior to his departure from Azerbaijan. He submits that he attempted to exhaust domestic remedies in Azerbaijan from abroad by submitting an individual communication to the Human Rights Committee on 14 May 2004 and by seeking the advice of a lawyer who was appointed by the Greek authorities to assist him and his wife with their asylum application. The author claims that the lawyer refused to "address the issue of police violence" in the author's country of origin, explaining that it was beyond his mandated duties. The author does not have the financial means to hire another lawyer in Greece. As to the possibility of his representation by a family member in Azerbaijan, the author argues that it would put his relatives' lives in danger. He concludes that, for him, domestic remedies in Azerbaijan are unavailable. He requests the Committee to exempt him from the requirement to exhaust them.

#### **Decision on admissibility**

6.1 During its ninety-sixth session on 28 July 2009, the Committee considered the admissibility of the communication. As required by article 5, paragraph 2(a), of the Optional Protocol, the Committee had ascertained that a similar complaint submitted by the author was declared inadmissible *ratione temporis* by a Committee of three judges of the European Court for Human Rights on 6 February 2004 (application No. 34014/03). Therefore, the Committee concluded that it was not precluded by article 5, paragraph 2(a), of the Optional Protocol from examining the present communication, as the issue was no longer being examined by the European Court.

6.2 The Committee took note of the State party's objection that the communication was inadmissible *ratione temporis* insofar as it related to events which took place prior to the accession of Azerbaijan to the Optional Protocol on 27 November 2001. In this regard, the Committee recalled its previous jurisprudence<sup>2</sup> that it could not consider alleged violations of the Covenant that occurred before the entry into force of the Optional Protocol for the

<sup>2</sup> Communication No. 24/1977, *Lovelace v. Canada*, Views adopted on 30 July 1981, paragraph 7.3; and Communication No. 1060/2002, *Deisl v. Austria*, Views adopted on 27 July 2004, paragraph 10.3.

State party, unless these violations continue after that date or continue to have effects which in themselves constitute a violation of the Covenant. In the present communication, the Committee noted that the insults, beating of the author's wife and demolition of the author's property on 27 October 1999 and the executory decision of the Court of Appeal of 30 November 2000 not to open criminal proceedings against Mr. B.G. all predated the entry into force of the Optional Protocol for the State party. The Committee did not consider that these alleged violations continued to have effects after 30 November 2000 which in themselves would have constituted violations of the author's and his wife's Covenant rights. Accordingly, the Committee considered that this part of the communication was inadmissible *ratione temporis* under article 1 of the Optional Protocol.

6.3 The State party had argued that the author's torture allegations have never been raised in the domestic courts, which rendered this part of the communication inadmissible for failure to exhaust all available domestic remedies. The author conceded that neither he nor his wife, or anyone acting on their behalf, have ever raised these allegations before the State party authorities or courts, either before or after their departure from Azerbaijan. He explained that such failure was due to fears of reprisal, a lack of financial means to hire a lawyer, and partly to the alleged futility of the exercise since, in any case, the police would collectively defend itself. The author claimed that, for him, domestic remedies in Azerbaijan were ineffective and unavailable.

6.4 The Committee observed that the State party had merely stated *in abstracto* that, contrary to the requirements of article 5, paragraph 2(b), of the Optional Protocol, the author's torture allegations have never been raised in the domestic courts, without addressing the alleged threats made against the author and his family. The Committee concluded that, in the circumstances and in the absence of further information from the State party, it could not be held against the author that he had not raised these allegations before the State party authorities or courts for fear that this might result in his victimisation and the victimisation of his family. The Committee also considered relevant in this regard that the author had been successful in obtaining refugee status in a third state. Therefore, the Committee accepted the author's argument that, for him, domestic remedies in Azerbaijan were ineffective and unavailable and considered that it was not precluded by article 5, paragraph 2(b), of the Optional Protocol from examining the communication.

6.5 The Committee therefore decided that the communication was admissible insofar as it raised issues with respect to article 7 of the Covenant for events that took place after the entry into force of the Optional Protocol for the State party.

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

7.1 On 4 March 2010, the State party submitted its observations on the merits. It reiterated the facts regarding the infliction of light bodily injury to the author's wife by Mr. B.G. and ensuing criminal proceedings. The State party also recalled that the author's complaint against Azerbaijan of 15 September 2003 was registered by the ECHR on 23 October 2003 and rightly found inadmissible *ratione temporis* by a Committee of three judges on 6 February 2004.

7.2 The State party drew the Committee's attention to the fact that the author has never claimed in his complaints to State bodies, courts, the Ombudsman's Office or representatives of human rights organisations that he had been subjected to torture or any other unlawful actions by police officers. It stated that, according to article 214.1.1 of the Criminal Procedure Code, criminal proceedings could be initiated exclusively on the basis of a written declaration or an oral statement of a natural person. The State party added that the author was fully aware of this legal requirement after his experience with Mr. B.G. but failed to make use of this right by not approaching any State or non-State bodies with a claim about torture or other unlawful actions by police.



7.3 The State party argued that the author's claim about the unavailability of domestic remedies in relation to the alleged ill-treatment and exertion of pressure on his family by police officers was "perplexing" because in his case against Mr. B.G., he had exhausted all domestic remedies without any hindrances and without any pressure being exerted on him.

7.4 The State party submitted that the author's claim about being persecuted by the police as a result of complaining ECHR was "completely unfounded", since not a single person who has complained against Azerbaijan to the ECHR<sup>3</sup> has ever claimed that he or she was subjected to unlawful actions for this reason. The State party challenged the veracity of the author's claims summarised in paragraph 2.10 above by arguing that the type of injuries allegedly inflicted on him must have necessarily prompted the author seek medical assistance and that, subsequently, a doctor would have been obliged by law to report the case to law-enforcement bodies.

7.5 The State party submitted that a visit to the author's home by police officers was unrelated to his allegations and was connected to the opening of criminal proceedings under article 194, part 2, of the Criminal Code against the author's son, who was accused of using fake documents for the purpose of exiting from military service. Since the author's son was wanted by the police, officers of the 29th police division visited the author's home several times during the period of 1999 to 2003 and drew up relevant reports with the participation of members of the author's family.

7.6 The State party further argued that the author could have complained about alleged abuse of power by police officers to the prosecutorial authorities under article 215.3.2 of the Criminal Procedure Code. It is improbable that the author was unaware of this avenue, since he "complained to different bodies for many years". Therefore, in the State party's view, the author's claim that he was afraid of referring to the state bodies was baseless. It added that, according to article 204.6 of the Criminal Procedure Code, the submission of an unsigned written declaration or of a written declaration with a false signature, as well as of an anonymous declaration, are the only possible impediments to the opening of criminal proceedings. Thus, the State party submitted that, even if the author had feared police persecution in Azerbaijan, he could have certified his signature by a notary in a country of his residence and filed a complaint to law-enforcement bodies from abroad.

7.7 As to the author's claim that between 1999 and 2003, he was arrested by police officers more than 50 times (see, paragraph 2.15 above), the State party argued that it was unclear why he could not remember the names of any police officers other than that of the district inspector. The State party also challenged the author's claim that any forensic medical examination had to be conducted in the presence of a police officer. It added that under the State party's law, forensic medical examinations were conducted in medical institutions in the absence of the police.

7.8 The State party concluded that despite the existence of domestic remedies and their accessibility even from abroad, the author's family has never availed itself of these remedies. Therefore, the Committee's decision on admissibility was at variance with article 5, paragraph 2(b), of the Optional Protocol.

7.9 In its further observations on the merits dated 8 April 2010, the State party referred to article 25 of the Law "On the Activities of the State Forensic Examination Service", according to which only parties to the criminal proceedings could take part in the conduct of a forensic examination. These parties could not interfere with the conduct of the examination but they could pose their questions to an expert and provide their own

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<sup>3</sup> The State party referred to 70 decisions and judgments delivered by the ECHR concerning Azerbaijan, including 23 judgments in which finding of a violation was found.

clarifications. According to article 5 of the Law, should an individual consider that his or her rights and freedoms were violated by activities of the state forensic examination service, he or she could appeal such actions either to the head of the forensic examination service or to a court. The State party referred to article 268.1.6. of the Criminal Procedure Code and provided a list of rights that a criminal suspect or accused has during a forensic examination. The State party added that these rights also pertained to an individual who was subjected to compulsory medical measures, provided that his or her mental state allowed for such participation.

7.10 The State party also referred to article 66 of the Constitution, according to which no one may be forced to testify against himself or herself, their spouse, child, parent or sibling. Under article 7.0.32, of the Criminal Procedure Code, one's spouse, grandparents, parents, siblings and children, were considered among others to be close relatives. According to article 20 of the Criminal Procedure Code, no one may be forced to testify against him or herself or against close relatives, nor may one be persecuted for doing so. An individual who was invited to testify against him or herself, or close relatives during the pre-trial investigation or in court, had the right to retract this testimony without fearing any adverse legal consequences. The State party added that the Criminal Code contained provisions<sup>4</sup> that, in specific circumstances, excluded criminal liability for witnesses or injured persons who deliberately gave false testimony or refused to testify.

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

8.1 On 25 June 2010, the author commented on the State party's observations. He reiterated his claims summarised in paragraphs 2.1 – 2.8 and 5.1 – 5.2 and challenged the State party's contention that the exhaustion of domestic remedies in his case against Mr. B.G. was without any hindrances.

8.2 The author refuted the State party's argument that he had never claimed in his complaints to State bodies, courts, the Ombudsman's Office or representatives of human rights organisations that he had been subjected to torture or any other unlawful actions by police officers. He submitted that he had complained about torture to all these bodies both in writing and orally and that it could not be held against him if these bodies had unduly discarded his complaints. As to the last ill-treatment by the police of 10 December 2003, the author explained that the lack of complaints by him and his wife were due to despair and fear of reprisals. He recalled that they were advised by their defence lawyer to leave Azerbaijan, because they could be physically "exterminated" (see, paragraph 2.12 above).

8.3 As to the State party's argument that criminal proceedings could be initiated exclusively on the basis of a written declaration or an oral statement and that the author could have complained to the prosecutorial authorities under article 215.3.2 of the Criminal Procedure Code, the author submitted that all of his and his defence lawyer's complaints to the courts and prosecutorial authorities in the case against Mr. B.G. have resulted in further violence, intimidation and humiliation by the police, Mr. B.G. and state officials who patronised Mr. B.G.'s family. The author added that after his complaints he would be taken for a "talk" with the deputy head of the 29th police division nicknamed "bone-breaker" and beaten up to "calm him down". The author would then complain about the beatings to his defence lawyer, who would in turn go to the police and demand an explanation. The police, however, "closed ranks".

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<sup>4</sup> Reference is made to the annotation to articles 297 and 298 of the Criminal Code, according to which an individual who refused to testify against him or herself or a close relative is exempt from criminal liability. Equally exempt is an individual who deliberately gave false testimony if he or she was forced to testify against him or herself or a close relative.

8.4 The author drew the Committee's attention to the contradiction between the State party's arguments summarised in paragraphs 7.4 and 7.7 above, and reiterated his earlier claim that any forensic medical examination had to be conducted in the presence of a police officer. He added that when his defence lawyer tried to obtain such a medical certificate, he was told by a doctor that he could issue a certificate only in the presence of a police officer. The lawyer then went to the 29th police division but police officers refused to accompany him to the medical institution.

8.5 The author refuted the State party's claim that the visits to the author's home by police during the period of 1999 to 2003 were connected to the opening of criminal proceedings against his son. He added that the timing of the visits coincided with the start of his "problem" with the police, whereas his son was demobilised from the military service two years earlier in December 1997.

8.6 The author claimed that all he and his family have been through was "punishment" for his role in Mr. M.A.'s case and, in substantiation of this claim, he provided a copy of the article entitled "Tragedy in Kusar: a mistake of investigation or ...", which was published in "The Mirror" newspaper on 4 April 1998. The article related to the conduct of the criminal investigation with regard to Mr. M.A., a brother of the author's wife. Mr. M.A. was accused and subsequently found guilty by the Kusar District Court of having killed Mr. S.B. on 15 November 1997 in the course of a drunken fight. The article questioned the version of the events presented by the investigation and highlighted some irregularities in its conduct.

8.7 In his explanatory letter to the Committee, the author stated that after Mr. M.A.'s conviction by the court of first instance, the author had hired two lawyers "who have expediently found the real murderer", a brother of the Head of the Road Traffic Inspection, Mr. G.G. It appeared that Mr. G.G. bribed the head of police, the prosecutor and judge in order to keep his brother out of trouble and found the "scapegoats", Mr. M.A. and another co-defendant, to stand trial instead of him. Strong evidence in support of Mr. M.A.'s innocence collected by the lawyers hired by the author prompted the Supreme Court of Azerbaijan to quash Mr. M.A.'s conviction by the Kusar District Court and to send it for re-trial to the Cuba District Court. Despite strong evidence in support of Mr. M.A.'s innocence, he was again found guilty of having killed Mr. S.B. but this time released in the courtroom after serving 13 months in detention.

8.8 The author stated that "his acquaintance from the General Prosecutor's Office" had warned him about possible revenge and "extermination" by the Kusar law-enforcement officials for his role in Mr. M.A.'s case. Apparently, the author "angered those who had to pay a lot to buy out" Mr. G.G.'s brother and he "would not be forgiven for that". The author was warned to "be careful and not to be trapped". The author further submitted that nine months later, in October 1999, "they" succeeded in setting his sister against him by threatening to imprison her son (who worked with the Road Traffic Inspection) should she refuse to co-operate. The author considered that this was all orchestrated by the Deputy Prosecutor of the Yasamal District, Mr. B.P. "They" had hoped that the author would react violently to the demolition of his house and beating of his wife, so that he could be imprisoned and eventually punished for his activism.

8.9 As to the State party's argument that the author could have filed a complaint from abroad, the author recalled his earlier claim that a lawyer appointed by the Greek authorities to assist him and his wife with their asylum application refused to "address the issue of police violence" in Azerbaijan and that the author did not have the financial means to hire another lawyer (see paragraph 5.3). The author therefore requested the Committee to uphold its position that, due to the impossibility to obtain legal aid, he should be exempt from the requirement to exhaust domestic remedies in Azerbaijan.

8.10 The author stated that he did not understand the relevance of the State party's further observations dated 8 April 2010 for the present communication.

### **Consideration of the merits**

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

9.2 The Committee has taken note of the State party's observations of 4 March 2010, which challenge the admissibility of the communication. It considers that the arguments raised by the State party are not of such a nature as to require the Committee to review its admissibility decision, owing in particular to the lack of new relevant information with regard to the alleged threats made against the author and his family.<sup>5</sup> The Committee therefore sees no reason to review its admissibility decision and proceeds to consider the case on its merits.

9.3 The Committee recalls that, when it found the present communication admissible insofar as it raised issues with respect to article 7 of the Covenant for events that took place after the entry into force of the Optional Protocol for the State party,<sup>6</sup> it requested the State party to submit to the Committee written explanations or statements clarifying the matter, and indicating the measures, if any, that may have been taken. In this regard, the Committee also recalls its General Comment No. 20 on article 7, which states that the text of article 7 allows for no limitation or no derogations from it, even in situations of public emergency.<sup>7</sup> Therefore, in order for a prohibition of ill-treatment contrary to article 7 to be of an absolute nature, the State parties have an obligation to investigate well-founded allegations of torture and other gross violations of human rights promptly and impartially.<sup>8</sup> Where investigations reveal violations of certain Covenant rights, States parties must ensure that those responsible are brought to justice.<sup>9</sup>

9.4 In the present case, the author provided a detailed description of his and his wife's alleged ill-treatment by the police on 10 and 11 December 2003 and corroborated these allegations by a copy of the report issued by the Medical rehabilitation Centre for Torture Victims in Athens on 20 July 2005, according to which the author was a torture victim and he continued to suffer physical and psychological effects of torture. The State party refuted this allegation by stating that the author had never made these complaints to State bodies, courts, the Ombudsman's Office or representatives of human rights organisations in Azerbaijan that he had been subjected to torture or any other unlawful actions by police officers. The Committee notes, however, that it accepted in the decision on admissibility the author's argument that for him domestic remedies in Azerbaijan were ineffective and unavailable and observes that the arguments provided by the author in the context of the present communication necessitated at the very minimum an investigation of the potential

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<sup>5</sup> See, Communication No. 1382/2005, *Salikh v. Uzbekistan*, Views adopted on 30 March 2009, paragraph 9.2.

<sup>6</sup> The author's claims under article 17; article 23, paragraph 1, and article 26 of the Covenant are related exclusively to the demolition of the part of his house by Mr. B.G. and the way in which the State party authorities and courts handled his case against Mr. B.G., that is, events that took place before the entry into force of the Optional Protocol for the State party.

<sup>7</sup> Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of torture and cruel treatment or punishment), 1992 (HRI/GEN/1/Rev.8), paragraph 3.

<sup>8</sup> Ibid paragraph 14.

<sup>9</sup> Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004 (HRI/GEN/1/Rev.8), paragraph 18.

involvement of the State party's law-enforcement officers in the ill-treatment of the author and his wife.

9.5 The Committee also recalls its jurisprudence<sup>10</sup> that the burden of proof cannot rest alone on the authors of the communication, especially considering that the authors and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information. While the Committee, on the material before it, is unable to make a positive finding of the ill-treatment of the author and his wife by the State party's law-enforcement officers, it is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. The State party, however, did not provide any information as to whether any inquiry was undertaken by the authorities in the context of the present communication to address the detailed and specific allegations advanced by the author in a substantiated way. In these circumstances, due weight must be given to these allegations. The Committee considers, therefore, that the State party has failed in its duty to adequately investigate the allegations put forward by the author and concludes that the facts as presented disclose a violation of article 7, read in conjunction with article 2, paragraph 3, of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by the State party of article 7, read in conjunction with article 2, paragraph 3, of the Covenant.

11. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy in the form, inter alia, of an impartial investigation of the author's claim under article 7, prosecution of those responsible and appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests the State party to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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<sup>10</sup> Communication No. 30/1978, *Bleier v. Uruguay*, Views adopted on 24 March 1980, paragraph 13.3; Communication No. 84/1981, *Berbato et al. v. Uruguay*, Views adopted on 21 October 1982, paragraph 9.6.