

Complaint under the Optional Protocol to the International Covenant on Civil and Political Rights

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I. Information on the complainant/author/victim

Name: EL HAGOG JUM'A (mr.)

First names: Ashraf Ahmad

Nationality: Bulgarian since 24 July 2007 (previously: Palestinian)

Date and place of birth: 25 October 1969, Alexandria, Egypt.

Address or current whereabouts: Sofia, Bulgaria

Represented by:

Prof. dr. Liesbeth Zegveld

Address for correspondence on this complaint:

Böhler Franken Koppe Wijngaarden Advocaten

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Power of authority appointing Prof. dr. Liesbeth Zegveld as his representative is attached (Annex 1).

Executive summary of the case

The communication concerns the arbitrary death sentence imposed on the author in the so called 'Benghazi HIV trial' following a flawed and flagrantly unfair trial. Prior to the trial the author, as well as five Bulgarian nurses, were tortured in order to extract incriminating confessions against themselves and co-accused. The author was held incommunicado in inhuman conditions for an extensive period of time starting in 1999 during which he was tortured. The torture lasted up until the trial.

Despite undisputed evidence of torture both from medical sources and following explicit confessions made by the torturers, the latter remained unpunished. The author's complaints in court about torture were consistently disregarded. An investigation into the torture claims was not started until 3 years after the events which resulted in the perpetrators' acquittal.

The trial against the author was seriously flawed. The confessions obtained by torture were used and admitted in court against him and the nurses. Evidence of eminent experts on HIV, including professor L. Montagnier, the co-discoverer of the AIDS virus, was disregarded by the Libyan courts. Montagnier had established that Mr. El Hagog could not have caused the HIV infection since it had its origin before he started working at the hospital. Conversely, the national courts used a national experts' report which provided an unsupported conclusion that El Hagog could be held responsible for the infection of the children. The defence was also hindered in the exercise of its duties when the national court denied hearing of pivotal witnesses.

The complaints to the Human Rights Committee relate to the violation of the prohibition of imposing an arbitrary death sentence, the prohibition of torture and inhuman or degrading treatment, the right security and liberty of the person and the right to a fair trial and (6, 7, 9, 10 and 14 ICCPR) .

II. State concerned/Articles violated

Name of the State that is a party to the Optional Protocol: Libyan Arab Jamahiriya

Articles of the Covenant alleged to have been violated: Articles 6, 7, 9, 10 and 14 ICCPR

III. Exhaustion of domestic remedies/Application to other international procedures

Steps taken by or on behalf of the alleged victims to obtain redress within the State concerned for the alleged violation – detail which procedures have been pursued, including recourse to the courts and other public authorities, which claims you have made, at which times, and with which outcomes:

As regards the violation of Article 7

The author has raised the complaint about the torture, ill-treatment and forced confession before the People's Court in 2000. Neither the People's Court, nor the prosecutor took the case up, and they dismissed his claims. It was only in 2002 that the prosecutor ordered an investigation and subsequent prosecution of the perpetrators of torture against the author (**Annex 3**). The investigation however was inadequate and ineffective. As a result, the trial against the author's torturers, despite a number of confessions and witness statements about how the author was subjected to torture in order to obtain a confession, ended with an acquittal of the perpetrators on 7 July 2005 (see below). The public prosecutor did not appeal. The author however persisted by his claims about torture in the Benghazi Court. In its latest judgment of 19 December 2006, sentencing the author to death, the Benghazi Court yet again dismissed the author's explicit claims of torture.

(see facts below)

The author has addressed all competent instances to deal adequately with his complaints about torture. The remedies however, were and still continue to be ineffective. The Human Rights Committee clarified in its jurisprudence that for a remedy against torture to be effective, it should be judicial in nature, and lead to an effective investigation, judgement and punishment of those responsible, and reparation.¹

Therefore, at the national level no effective remedy is available against this violation.

As regards the violation of Article 14

As regards the use of torture in order to extract a confession

The author has exhausted all existing and potentially effective remedies against the violation of his right not to be compelled to testify against himself or to confess guilt. His complaints about this to court and the prosecutor have either been partly dismissed and partly resulted in an acquittal of those responsible for his torture. As evidenced by the re-trial judgment of the Benghazi Criminal Court of 19 December 2006, this court has once again dismissed the author's claims that his confession was obtained through torture. This is exacerbated by the fact that the perpetrators were acquitted by the Tripoli Criminal Court on 7 July 2005. See facts below and complaint under Article 14 sub 3 g.

As regards undue delay of criminal proceedings

The author contends that no effective remedies were available against the unduly delayed criminal proceedings against him. Criminal proceedings were pending since his arrest on 29

¹ Referring to No. 612/1995, *José Vicenté et al. v. Colombia*, views adopted on 19 August 1997, para. 5.2; Communication No. 563/1993, *Bautista de Arellana v. Colombia*, views adopted on 27 October 1995, para. 8.2; Communication No. 4/1977, *William Torres Ramirez v. Uruguay*, views adopted on 23 July 1980, para. 5. See also general comment No. 26.

January 1999 until his release 24 July 2007. The final outcome of the case on 24 July 2007 has not changed the fact that the proceedings have thus lasted over eight years.

Have you submitted the same matter for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Court of Human Rights, or the African Commission on Human and Peoples' Rights)?

No

IV. Facts of the complaint

Detail, in chronological order, the facts and circumstances of the alleged violations. Include all matters which may be relevant to the assessment and consideration of your particular case. Please explain how you consider that the facts and circumstances described violate your rights.

Arrest and torture

1. The author was until his arrival in Bulgaria, on 24 July 2007, stateless of Palestinian origin. He and his family have lived in Libya since 4 September 1972.
2. At the beginning of the events in question the author was an advanced medical student at the University of Benghazi. Since 1998 the author worked as an intern in the El-Fateh paediatric hospital in Benghazi, Libya (**Annex 2**).
3. On 29 January 1999 the author was arrested. He was (much later told that he was) charged with premeditated murder and causing an epidemic by injecting 393 children with HIV in the children's hospital Al-Fatih in Benghazi (punishable with death);
4. The author was tortured in order to extract a confession. Methods of torture included: extensive use of electric shocks, including *falaqa* (beatings on the soles of the feet) and with electric cables on the legs, feet, hands, and breasts; being hung by the hands; electric shocks while stretched naked on a steel bed; stifling by deprivation of air and strangulation; being suspended from a height by the arms; blindfolding and threats with being attacked by dogs; beatings; injections of drugs; sleep deprivation; sensory isolation; the use of fire and ice-cold showers; being held in over-crowded cells; being blinded by bright lights. The author was also subjected to anal rape. (See reports of international organisations, statements of the author and witnesses as well as medical records in **Annexes 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16 and 18**.)
5. The author 'confessed'. His confession triggered a further wave of arrests of, in particular, Bulgarian medical personnel in Libya. On 9 February 1999, 23 members of an international medical team, all Bulgarian nationals, working in different hospitals in Benghazi, including the Al-Fateh children's hospital, were arrested by the Libyan police without being informed of the grounds for their arrest or of the nature of the investigation. Seventeen Bulgarians were subsequently released on February the 16th.
6. The author and the five co-accused Bulgarian nurses,² were tortured for approximately two months in order to extract further 'confessions'; sometimes on a daily basis. After

² Kristiyana Venelinova Valcheva, Nasya Stoycheva Nenova, Valentina Manolova Siropulo, Valya Georgieva Cherveniyashka, Snezhanka Ivanova Dimitrova.

that, the torture ceased to be used on them routinely, but did continue.

7. Doctor Zdravko Georgiev, a Bulgarian doctor and husband of nurse Kristiana Vulcheva, who had returned to Benghazi after her arrest, was in turn arrested and charged with illegal possession of and transactions in foreign currency. Incidentally, neither Dr. Georgiev nor his wife had ever worked at the children's hospital in Benghazi.
8. On 15 May 1999, the case was referred to the People's Prosecution Office, which brought the following charges against them:
 - commission of acts within Libyan territory leading, sooner or later, to the indiscriminate killing of people for the purpose of subversion of the security of the state (a capital offence);
 - involvement in a conspiracy and collusion for the commission of the above premeditated crimes;
 - deliberately causing an epidemic by injecting 393 children (23 of whom died before October 1999) at the Al-Fateh Hospital in Benghazi with the AIDS virus (a capital offence);
 - premeditated murder through the use of substances which cause death, sooner or later, by injecting children with the AIDS virus (a capital offence);
 - commission of acts that are contrary to Libyan law and traditions (illegal production of alcohol, drinking alcohol in public places, illegal transactions in foreign currency, illicit sexual relationships).
9. The author and his co-defendants were first brought before the Popular Prosecution Office on 16 May 1999, approximately four months after their arrest. They were subsequently taken to the Popular Prosecution Office every 30 to 45 days in order to have their detention order renewed.

First trial

10. The first time the author was granted access to a lawyer was in February 2000, after their trial had opened before the People's Court of Libya (Mahkamat al-Sha'b), the extraordinary court for crimes against the State. The author and his co-defendants, raised their allegations of torture in court at this very first opportunity. The Court however dismissed their allegations and did not order any investigation into them.
11. When the author was finally granted limited access to his family and a lawyer, he explained that he was too frightened to report his allegations of torture. The officials torturing the author and his co-defendants instructed them not to mention their treatment to their diplomatic representatives. At the level of the prosecution, the author and his co-defendants said that they were taken to the Popular Prosecutor by some of those who had carried out the torture and were threatened with further torture if they did not "confess" in front of them. The author was also beaten on one occasion in the Popular Prosecution Office.
12. The trial before the People's Court began on 7 February 2000 (Case 44/1999). The author and his co-defendants were not assisted by a lawyer until after 17 February 2000, ten days after the trial opened. At no time were they able to speak with the lawyer freely, as someone was constantly present during these interviews, which were moreover recorded. All the accused pleaded not guilty. The confession and the contention of the Head of State, Colonel Gaddafi, that the accused worked as CIA and

Mossad agents were considered to be the basis of the case. The author stated during the hearings that the confessions were obtained through torture.

13. On 20 March 2001 the author was taken to the hospital due to his seriously deteriorated state of health. He remained there for 25 days (**Annex 17**).
14. At the first trial, in June 2001, two of the accused (Kristiyana Vulcheva and Nasya Nenova) retracted their confessions, saying that they had been extracted from them through torture, account of hearings before the People's Court (see also in **Annex 10** the report of the Parliamentary Assembly of the Council of Europe on the facts and torture).
15. The criminal case against the author and co-accused was initially suspended because the Court did not see any evidence for the accusation of conspiracy against the country.
16. Two years later, on 17 February 2002, the People's Court found that there was no proof of a conspiracy against state security. It dismissed the case and remanded it to the Criminal Prosecution Service, which forms part of the ordinary criminal justice system. The author and his co-defendants remained in custody. The prosecutor withdrew the charge of participation in a CIA/Mossad conspiracy and presented a new charge of illegal drug experiments and contamination with HIV mutations.

Second trial. Benghazi Appeals Court: ordinary criminal court for felonies - Case 213/2002

17. In August 2002, the Benghazi Criminal Court Arraignment Chamber maintained the charges of murder through deliberate contamination of children with the HIV virus, economic crime, illegally producing alcohol, drinking alcohol in a public place, and behaviour damaging to public order, and referred the case to an ordinary criminal court (Benghazi Appeals Court). During this second trial, the prosecution relied on two pieces of evidence: one was the admissions made by one of the nurses – Nasya Nenova – and the Palestinian doctor before the prosecutor, the other the results of the house-search at the residence of another nurse – Kristiyana Vulcheva – leading to the discovery of five contaminated bottles of blood plasma.
18. During the search of the authors room at the student complex of the University (at Beit El Sabiri, Building 5, Flat 18, Room 2) several items and belongings have been confiscated (see **Annex 21**). These items and belongings remain unreturned.
19. In July 2003 the new trial opened before the Benghazi Criminal Appeals Court. The prosecutor stated that the case documents do not reflect the real number of infected children which was 426.
20. During the trial, Professor Luc Montagnier (co-discoverer of the HIV virus in 1983, Director of the Viral Oncology Unit at the *Institut Pasteur* in Paris until 2006) and Professor Vittorio Colizzi (who heads the Laboratory of Immunochemical and Molecular Pathology in the Biology Department of Tor Vergata University in Rome) were appointed as experts by the Gaddafi International Foundation (chaired by the son of the Head of State, Mr Saif El Islam El Gaddafi). They were heard by the court in September 2003 and were able to submit the results of a study conducted jointly. This study exonerated the author and the Bulgarian medical team, showing clearly that the infection had broken out in 1997 at Al-Fateh Hospital in Benghazi, in other words over a year before the author and the Bulgarians had come to work there, and that it continued after their arrest; the study concluded that there had been a series of

accidental nosocomial infections caused by a very specific and highly infectious virus strain, owing to poor standards of hygiene and neglect. Nosocomial infections are those which are a result of treatment in a hospital or hospital-like setting, but secondary to the patient's original condition (**Annex 28**).

21. The expert witnesses thus testified that the epidemic predated the arrival of the accused. They also testified that it was impossible to determine the mode of infection. Professor Montagnier testified that the virus in the 393 children studied was a rare type found mostly in West African but also through out the continent. Professor Montagnier testified he was sure the epidemic started a year before the author and the nurses arrived. In December 2003 the court ordered a further expert report. The study was carried out by five Libyan doctors, who rejected the findings of the international experts and found that the AIDS epidemic was not attributable to nosocomial infections or to the re-use of infected medical equipment, but to a deliberate act. The defence called for a further investigation and the appointment of a new team of independent experts. The court dismissed this application.
22. On 28 December 2003 a Libyan national experts committee submitted its report to the court (**Annex 29**). In this 1.5 page document the committee contended:

Upon examining the scientific [*sic*] attached scientific papers, medical reports, and defence memoranda, with respect to the scientific view and according to known scientific practices, the National Experts Committee deems the outbreak of AIDS in the Al-Fateh Children Hospital as not having occurred as a result of a nosocomial infection and having not resulted because of the misuse and/or the reuse of medical instruments. Furthermore, the data available to us did not contradict the possibility of a deliberate transmission of HIV to the infected children.
23. On 6 May 2004, after over five years' custody, the criminal court in Benghazi sentenced the five members of the Bulgarian medical team and the Palestinian doctor to capital punishment for having caused the death of 46 children and contaminated another 380. The accused were also ordered to pay the parents of the contaminated children compensation for material and psychological damage. For his part, Dr Georgiev was sentenced to four years of immediate imprisonment.
24. In addition to the Palestinian doctor and the five Bulgarian nurses, nine Libyans who had all been members of the management and the administrative staff of the al-Fateh hospital, including the director, were prosecuted on the same charges and appeared at the same trial. The Libyans appeared at the trial as free individuals, having been released on bail at the start of the proceedings. They were acquitted.
25. As for the eight Libyans belonging to the security services who were accused of torture, the court relinquished jurisdiction and referred their case back to the prosecutor's office.

The author's appeal to Libyan Supreme Court against the conviction

26. On 5 July 2004 the author lodged an appeal on points of law with the Supreme Cassation Court against the verdict of the Benghazi Criminal Court of 6 May 2004.
27. The Supreme Court started the hearing on appeal on 29 March 2005. The prosecutors requested the court to revoke the death sentences and to refer the case to the Benghazi Criminal Court for retrial. It noted "irregularities" in the arrest and interrogation of the applicant and his co-defendants. The Libyan Supreme Court, having heard the appeal, was originally due to deliver its judgment on 31 May 2005 but first postponed it to 15 November 2005 and then again until 31 January 2006. The Court has repeatedly refused

requests by the defence for bail, citing there were insufficient guarantees that the author and his co-defendants would appear at trial.

28. The judgment of the Supreme Court was unexpectedly delivered on 25 December 2005. It quashed the judgment of the Benghazi Criminal Court and referred the case for a retrial.

Retrial and release

27. The Tripoli Criminal Court reopened the trial on 11 May 2006. The hearings lasted until 29 August 2006. The Libyan prosecutor demanded the death penalty for the author and his co-defendants. Further submissions by Libyan medical experts were introduced by the prosecutor. The author pleaded again not guilty and testified once more that he was tortured to make him confess (**Annex 23**). On 19 December 2006 the author and his co-defendants were found guilty again and sentenced to death (**Annex 20**). According to the court:
 - The mothers of the HIV-infected children do not carry the virus;
 - Unnaturally high levels of HIV in the children's blood testified to the fact that the infection was intentional;
 - The infection only spread in the specific hospital rooms that the author and the five nurses were serving;
 - The research by the World Health Organization showed that the HIV infected children also had Hepatitis C, which was proof that the infection was intentional and malicious. (Co-infection with Hepatitis was emphasized as indicating poor hygiene and reuse of syringes by the WHO study authors themselves, as well as all of the other non-Libyan studies used by the defence)
28. The court also held that it is not willing to accept the fact that the author and the nurses were tortured, because another court has already waived this accusation, and found therefore that the author and his co-defendants all confessed in full consciousness and without being subject of any violence or torture.
29. The author lodged an appeal with the Supreme Cassation Court on points of law (**Annex 22**). The date of the next Supreme Court session was 11 July 2007 although it was supposed to take place within three months after the submission of the appeal. On the mentioned date the Supreme Cassation Court upheld the death sentences of five Bulgarian nurses and the author. However on July 17, 2007, the High Judicial Council, Libya's highest judicial body that is headed by the minister of justice, announced that the sentences would be commuted to life imprisonment after the families of the 438 HIV infected children agreed a compensation deal reportedly worth \$1m (£500,000) per child. Subsequently, as a result of negotiations between Libya and various diplomats and statesmen, the author was transferred to Bulgaria to serve his sentence on 24 July 2007, where he was immediately pardoned and released from serving his sentence by the Bulgarian authorities (**Annex 27**).

Torture claims

30. The torture claims which were already made as early as 2000 by the author and his co-defendants before the People's Court, were not investigated. In June 2001 two of the co-defendants (Kristina Vulcheva and Nassya Nenova) retracted their confessions because

they had been extracted from them through torture they had been subjected to and pointed to those responsible for it.

31. Only in May 2002 the Criminal Prosecution Office, to which the case had by then been referred, finally decided to react to the allegations of torture made by the accused and ordered a medical report. The prosecution decided to bring proceedings against eight members of the Libyan security forces who were in charge of the investigation, a doctor and an interpreter. In June 2002 a Libyan doctor, appointed by the prosecutor, examined the author and his co-defendants and, in all cases except for Dr. Georgiev, found traces on their bodies which he argued resulted from “physical coercion” or “beatings” or both (**Annex 4 and Annex 5**).
32. On 7 May 2004 the UN Special Rapporteur on Torture sent an Urgent Appeal to Libya regarding the author’s and the nurses’ case and requested information about the reports that they had been tortured in order to obtain confessions and that the trial had been summary and marked by arbitrariness. It also queried about the lack of prosecution of officials who had been responsible for this (E/CN.4/2005/7/Add.1; **Annex 16**). The Libyan Government responded that the author and his co-accused were not denied the right to a fair trial. As to the allegations of confessions extracted under torture, the Government stated that Department of Public Prosecutions intended to refer the case of the police officers to the Tripoli Criminal Court since that court had competence for hearing the case against them (**Annex 20**).
33. A number of police officers and a medic who had been initially accused of torturing the author and his co-defendants were questioned and subsequently arraigned before the Benghazi Criminal Court (**Annex 24**). Having reviewed the charges against the police officers, the Court determined that it did not have competence to rule on the matter, since the offence had not been committed within its jurisdiction. (It had allegedly occurred in Tripoli.)
34. On 25 January 2005, the Tripoli Criminal Court opened proceedings against ten Libyans – eight police officers, a doctor and an interpreter - on charges of torture and ill-treatment. One of the members of the special team appointed to question the Bulgarian medical personnel admitted that he tortured some of the accused and that some of those charged with him had also tortured them (see translation of these statements below, paragraph 46). Another police officer admitted that he saw his colleagues torture the nurses during their interrogation.
35. The Tripoli Criminal Court rejected the expert medical opinion produced by the defence which it had not been possible to perform until three years after the material facts, on the ground that a Libyan doctor officially appointed as an expert considered that the investigation had not been conducted in accordance with the protocols, that traces of torture were undetectable and that at all events the torture alleged left no marks after two or three weeks. On 7 June 2005 the Tripoli Criminal Court acquitted the suspects of torture perpetrated against the author and the nurses citing lack of evidence. Subsequently a Libyan officer and one health authorities representative lodged a libel suit against the author and the nurses.
36. The author and the nurses lodged an appeal against the acquittal of the torturers with the Supreme Court. On 29 June 2006 the Supreme Court of Libya upheld the acquittal of the Libyan police officers accused of torture.
37. On Friday 10 August 2007, international newspapers report that the son of Muammar Gadafy, Seif al-Islam, admits that the author and the Bulgarian nurses were tortured. In an interview with al-Jazeera TV he states: “yes they were tortured by electricity and

they were threatened that their family members would be targeted” (**Annex 20**).

Defamation case against the author and the nurses

38. On 25 February 2007 the Criminal Court in Tripoli held a hearing in a defamation case against the author and the Bulgarian nurses. The case was brought by three Libyan officers and a doctor claiming that the author and the Bulgarian nurses had accused them falsely of torture (**Annex 25**; see the author’s counsel’s pleadings **Annex 26**).
39. On 27 May 2007 the Tripoli court dismissed the charges and also rejected compensation claims made by the plaintiffs.

The author’s family in the Netherlands

40. The UNHCR considered that the author’s father, mother, and four sisters, fulfilled the conditions for refugee status and mediated for their coming to the Netherlands. On 19 December 2005 the author’s family came to the Netherlands as invited refugees and were subsequently granted refugee status.

V. Violations of the ICCPR as alleged by the author

The author complains of violations of Articles 6, 7, 9, 10 and 14 ICCPR.

A. Violation of article 6 ICCPR

Article 6 of the ICCPR provides, insofar as relevant here:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death *may be imposed* only for the most serious crimes *in accordance with the law in force* at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

The author’s submissions on arbitrary death sentence

41. On 19 December 2006, the author was convicted and sentenced to death by the Court of Appeal of Benghazi, Libya. This judgement was upheld on 11 July 2007 at the Supreme Cassation Court. On July 17, 2007, the High Judicial Council announced that the sentences would be converted to life imprisonment. However on 24 July 2007, the author was transferred to Bulgaria to serve his sentence, where he was pardoned immediately after arrival.
42. The facts above and considerations on article 14 ICCPR reveal that both the verdict of 19 December 2006 and the upholding of this judgment at the Supreme Cassation Court

on 11 July 2007 were the result of a flagrantly unfair and arbitrary trial. In its general comments and jurisprudence the Human Rights Committee has elaborated the meaning of the right to life and determined that in cases where the death penalty is imposed upon the conclusion of a trial, the procedural guarantees prescribed in the ICCPR must be observed. The imposition of the death penalty as a result of an unfair trial with numerous violations of article 14 ICCPR therefore violates article 6(2) ICCPR.

43. See, in this connection:

- Article 5 of ECOSOC Resolution 1984/50 on *Safeguards guaranteeing protection of the rights of those facing the death penalty*:

“Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.”

- HRC general comment No. 06 [16]:³

7. The Committee is of the opinion that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.

- In several views the HRC observed that if the due process guarantees in Article 14 of the ICCPR were violated, a sentence of death which was carried out would not be in conformity with Article 6 § 2 of the Covenant. This Article delineates the circumstances when it is permissible to give effect to the death penalty.

This is illustrated in the communication of *Carlton Reid v. Jamaica* (Communication No. 250/1987, views adopted on 20 July 1990):

“[T]he imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have not been respected constitutes (...) a violation of article 6 of the Covenant. As the Committee noted in its general comment 6(7), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that 'the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal'.”

And in the communication of *Marshall v. Jamaica* (Communication No 730/1996, views adopted on 3 November 1998):

“6.6 With regard to the author's claim to be a victim of article 6, paragraph 2, of the

³ Adopted on : 27-07-1982, Article : CCPR-6-1 / CCPR-6-2 / CCPR-6-3 / CCPR-6-4 / CCPR-6-5 / CCPR-6-6, Sources : A/37/40 (1982) Annex V (pp. 93-94) ; CCPR/C/21/Rev.1, (pp. 4-6).

Covenant, the Committee notes its general comment 6[16], where it held that the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence and the right to review of the conviction and sentence by a higher tribunal". In the present case, the preliminary hearing was conducted without meeting the requirements of article 14, and as a consequence the Committee finds that also article 6, paragraph 2, was violated as the death sentence was imposed upon conclusion of a procedure in which the provisions of the Covenant were not respected."

See also *Daniel Mbenge v. Zaire* (Communication No. 16/1977, views adopted on 25 March 1983), *Clifton Wright v. Jamaica* (Communication No. 349/1989, views adopted on 27 July 1992), *Peart and Peart v. Jamaica* (Communication Nos. 464/1991 & 482/1991, views adopted on 19 July 1995) and *Levy v. Jamaica* (Communication No. 719/1996, views adopted on 3 November 1998)

- The Advisory Opinion OC-16/99 of 1 October 1999 of the Inter-American Court of Human Rights on 'The right to information on consular assistance in the framework of the guarantee of due process of law' is also relevant:

"134. It might be useful to recall that in a previous examination of Article 4 of the American Convention (Restrictions to the Death Penalty, Advisory Opinion OC-3/83 of 8 September, 1983, Series A No. 3) the Court observed that the application and imposition of capital punishment are governed by the principle that '[n]o one shall be arbitrarily deprived of his life'. Both Article 6 of the International Covenant on Civil and Political Rights and Article 4 of the Convention require strict observance of legal procedure and limit application of this penalty to 'the most serious crimes'. In both instruments, therefore, there is a marked tendency toward restricting application of the death penalty and ultimately abolishing it.

135. This tendency, evident in other inter-American and universal instruments, translates into the internationally recognised principle whereby those States that still have the death penalty must, without exception, exercise the most rigorous control for observance of judicial guarantees in these cases. It is obvious that the obligation to observe the right to information becomes all the more imperative here, given the exceptionally grave and irreparable nature of the penalty that one sentenced to death could receive. If the due process of law, with all its rights and guarantees, must be respected regardless of the circumstances, then its observance becomes all the more important when that supreme entitlement that every human rights treaty and declaration recognises and protects is at stake: human life.

136. Because execution of the death penalty is irreversible, the strictest and most rigorous enforcement of judicial guarantees is required of the State so that those guarantees are not violated and a human life not arbitrarily taken as a result."

- Furthermore, the Inter-American Court of Human Rights in *Hilaire, Constantine and Benjamin et al v Trinidad and Tobago judgment of 21 June 2002*, § 148 stated:

"Taking into account the exceptionally serious and irreparable nature of the death penalty, the observance of due process, with its bundle of rights and guarantees, becomes all the more important when human life is at stake" .

44. Finally it should be noted that although the death sentences have been commuted to life imprisonment, this does not relieve the Libyan state from its obligations under article

6(2) ICCPR and the verdicts that imposed the death penalties therefore still constitute a violation. In the above mentioned communications, the Committee established violations of the right to life even in cases where the author's sentence was already commuted to life imprisonment. In addition, the Libyan authorities have played a questionable role in the commuting the death penalties into life imprisonment. The death sentences of the author and the Bulgarian nurses were commuted only as a result of a large sum of money offered to the families of the infected children and heavy pressure from the European Union, Bulgaria and other states.

B. Violation of article 7 ICCPR

Article 7 ICCPR provides that '[n]o one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.'

Torture in order to extract confessions

45. The author claims that he was subjected to torture and forced to provide a confession. The detailed facts are described above in §§ 1-6. This was in particular the case during the first months following his arrest when indeed the police managed to obtain 'confessions' incriminating himself and the Bulgarian nurses.

Specific evidence of torture

46. The following statements confirm the torture of the author:
- **Report of forensic doctor Mr. Hasan Ibrahim Hamidia dated 13 July 2002 who having examined the author on 19 June 2002, reported in forensic report number 3860/2002 (Annex 5):**

"An almost round pallid scar between the fingers, a scar on the right knee, a black somewhat pallid scar on the penis[...] The area around the anus is relatively pallid...The anal opening is somewhat widened. Near the opening there are a large number of loosely hanging bits of flesh and bulges, which cover the anus [...] On the basis of the foregoing and on the basis of our comprehensive examination on the person named Ashraf Ahmad Jum'a El Hagog, it has sufficiently become apparent to us that he was subjected to physical force and beatings. It is not possible to establish how long exactly this took place and when. Also it has become apparent to us that the above mentioned person was subjected to sexual intercourse via the backside "sodomy" and penetration. It is difficult to ascertain when this took place."
 - **Statement of major Salim Jum'a Salim, chief of the police station for training dogs. On 30 June 2002 he stated (Annex 8):**

"At the orders of brigade general Harb Derbal the suspects Ashraf, Christiana, Nasya, Snezhanka and Valya were taken to the department of Criminal investigation for interrogation. He [Harb Derbal (Director General of Criminal investigation)] brought a commission consisting of Dr. Abdulmajid Al Shawel, lieutenant-colonel Jum'a Al Mashari, major Usama Uwaidat, major Adel Al Nuas, sergeant-major Ju'a Imlatem and a number of staff officers, for the interrogation. [...] The suspect Christiana was interrogated at the directorate-general of Criminal investigation. When the interrogation started he brought a telephone machine along which works with cushions. He wanted to use it during the

interrogation. It gives an electric shock. During the interrogation everyone was taken in separately. Brigade General Herb requested to attach the wire to the fingers. He requested to activate the machine in order to interrogate the suspect. He asked me a couple of times to switch on the machine. Since it was an order, I carried it out. The suspects were also put blindfolded on the square. The person named Ashraf was put in a cage where there were no dogs. As concerns the use of dogs at the interrogation, this did not occur.

An anaesthetist was called in. His name was Abduljalil Wafaa. All suspects were sedated. I also remember that the brigade general requested the suspect Christiana once to take off her clothes. Luitenant-colonel Juma'a Al Mashari and myself were present at that time. He added indelicate words to this. He was emotional and asked her to make a confession. As far as my treatment of them is concerned, I can say that I treated them well. They know that. My soldiers and I did not hurt them.

When I switched on the machine, I did it because I am a military. When I get the order to switch in on, I switch it on."

- **Statement of Izzudin Mukhtar Saleh Al Baraki, sergeant-major at the Directorate General for Criminal Investigation, guard of the author, 29.7.2002 (Annex 8):**

"Q: Where were you working in 1998?

A: I worked as a guard of the suspects in case number 213/2002) [...] In the beginning I was ordered to primarily guard the suspect Ashraf, when he was at the Directorate General but also the other suspects [...]

Q: Did you notice any traces of force on the body of the aforementioned suspect?

A: Yes, I saw traces of forces between the fingers. One time Luitenant Nwar Abu Za'ainin came to him when he was praying. He pushed him, while he was praying. He did not stop with it. I prevented him from further hitting. Always when he [Ashraf] came out after examination, I saw fear on his face. Sometimes he cried and I saw tears in his eyes.[...]

Q: Have you ever seen one of the members of the commission use force on the suspect?

A: I have seen that Jum'a Al Mashari often went to the Department of Forensics. He would often let the suspect Ashraf run and shout at him that he had infected the children with the AIDS-virus. The suspect Ashraf denied this.

Q: as a guard of Ashraf Ahmed Jum'a: did he ever confess or state to you that he had participated in the crime which is attributed to him?

A: No, on the contrary. He kept insisting that he was not involved in that.[...]

I did not see that the suspects were beaten or tortured. I did see that the suspects were placed for long periods of time facing the wall. I also saw that their feet were swollen when they were in the Al Nasr Street "

- **Statement of Salim Jum'a Salim, chief of the police station for training dogs, guard of the author and his co-defendants, also present during the interrogations, 29.7.2002 (Annex 8):**

"Q: Has the commission use any pressure or any force on the suspects?

A: Yes, the commission has exerted some pressure and some elementary forms of force on the suspects."

Q: Can you remember the names of the suspects on whom physical force was exercised?

A: Physical force was exercised on the suspects Ashraf, Christiana, Nasya and Valentina.

Q: Can you tell us what sort of pressure and physical force was exerted on the suspects?

A: As regards Ashraf Ahamd Jum'a, Chirstiana and Nasya electrical equipment was used. The suspects were further placed in dogs cages. They also were made to run on the square.[...]

I know that Jum'a Al Mashari has exerted physical force with electrical equipment. Also Abdulmajid Al Shawal and brigade general Harb Derbal. Usama Uwaidat was also often present at the interrogation sessions. [...]

▪ **Statement of author and his co-defendants about torture as reported by HRW, 'Libya: Foreign Health Workers Describe Torture', 15.11.2005 (Annex 14):**

"[...] There are credible allegations of torture against the foreign health workers," said Sarah Leah Whitson,

Middle East and North Africa director of Human Rights Watch. "The Libyan Supreme Court should take these facts into account and reject the death sentences. [...]"

Four of the foreign health workers told Human Rights Watch that interrogators subjected them to electric shocks, beatings to the body with cables and wooden sticks, and beatings on the soles of their feet, in order to extract their confessions. In May, Human Rights Watch interviewed the foreign health workers in Tripoli's Jadida prison.

"I confessed during torture with electricity. They put small wires on my toes and on my thumbs. Sometimes they put one on my thumb and another on either my tongue, neck or ear," Valentina Siropulo, one of the Bulgarian defendants, told Human Rights Watch. "They had two kinds of machines, one with a crank and one with buttons."

Another Bulgarian defendant, Kristiana Valceva, said interrogators used a small machine with cables and a handle that produced electricity.

"During the shocks and torture they asked me where the AIDS came from and what is your role," she told Human Rights Watch. She said that Libyan interrogators subjected her to electric shocks on her breasts and genitals.

"My confession was all in Arabic without translation," she said. "We were ready to sign anything just to stop the torture."

The five Bulgarian nurses are being held in a special wing of Jadida prison, where they now get regular visits from their lawyers and Bulgarian officials. The Palestinian doctor, Ashraf Ahmad Jum'a, is in the men's section of the prison by himself in the wing for those on death row.

"We had barbaric, sadistic torture for a crime we didn't do," Jum'a told Human Rights Watch during an interview conducted in the presence of a prison guard. "They used electric shocks, drugs, beatings, police dogs, sleep prevention."

"The confession was like multiple choice, and when I gave a wrong answer they shocked me," he said. He claimed that the defendants were also forced to shock each other."

47. The above presents clear-cut evidence, both through medical records and unambiguously confirmed by the witness statements that the Libyan authorities are responsible for torture of the author while at the hands of the investigating forces. The fact that some of the perpetrators omit or rather refuse to mention the more severe ill-treatment is contradicted by the actual medical findings on the author and his co-defendants. While the doctor could not establish the exact moment of occurrence of the torture by rape and use of electrical equipment, there are no indications that the author entered the detention in bad health condition.

Reliance on international materials

48. The account of use of torture fits in picture stemming from international reports on the author's case:
- OMTC: Libya: detention, torture and risk of an unfair trial of five Bulgarian nurses and one doctor, one Palestinian and 9 Libyans - Case LBY 280901 - Arbitrary Arrest and Detention/Torture/Fair Trial;
 - Urgent appeal, UN Special Rapporteur on torture, 7 May 2004;
 - HUMAN RIGHTS WATCH, Libya: Foreign Health Workers Describe Torture, 15 November 2005
 - HUMAN RIGHTS WATCH, Libya: Rescind Death Penalty for Foreign Medical Workers, 19 December 2006
 - Amnesty International report, Libya; Time to make human rights a reality. April 2004 pp. 33-36.
 - AMNESTY INTERNATIONAL Libya: Death sentences for foreign medics must be withdrawn 19 December 2006
 - Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights Doc. 10677 19 September 2005, Serious human rights violations in Libya – inhuman treatment of Bulgarian medical staff, Report, Rapporteur: Mr Tony Lloyd.

Relevant case law regarding burden of proof

49. As the Committee has held on various occasions the burden of proof cannot rest solely on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. The complaints were made at the earliest possible stage, when the author was finally brought before a judge, 8 months after his arrest and incommunicado detention (**Annex 3**). Also at that time the author showed clear signs of physical ill-treatment, but no action was taken about that neither by the public prosecutor nor the court.
50. Reference is made to the reasoning used in Communication No. 1096/2002, the case of Safarmo Kurbanova on behalf of her son, Abduali Ismatovich Kurbanov, *Kurbanova v. Tajikistan*, views adopted on 6 November 2003:

7.4 The Committee has noted the author's fairly detailed description of beatings and other ill-treatment that her son was subjected to. She has furthermore identified by name some of the individuals alleged to have been responsible for her son's ill-treatment. In reply, the State party has confined itself to stating that these allegations were neither raised during the investigation nor in court. The Committee recalls, with regard to the burden of proof, that this cannot rest alone with the author of a communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information. Further, the mere fact that no allegation of torture was made in the domestic appeal proceedings cannot as such be held against the alleged victim if it is proposed, as in the present case, that such an allegation was in fact made during the actual trial but was neither recorded nor acted upon. In the light of the

details given by the author on the alleged ill-treatment, the unavailability of a trial transcript and the absence of any further explanations from the State party, due weight must be given to the author's allegations. Noting in particular that the State party has failed to investigate the author's allegations, which were brought to the State party's authorities' attention, the Committee considers that the facts as submitted disclose a violation of article 7 of the Covenant.

51. See further also Communications No. 161/1983, *Joaquin Herrera Rubio v. Colombia*, views adopted on 2 November 1987; No. 146/1983, *Kanta Baboeram-Adhin et al. v. Suriname*, views adopted on 4 April 1985, para. 14.2; No. 139/1983, *Ilda Thomas v. Uruguay*, views adopted on 17 July 1985, para. 7.2; No. 202/1986, *Graciela Ato del Avellanal v. Peru*, views adopted on 28 October 1988, para. 9.2; No. 30/1978, *Irene Bleier Lewenhoff and Rosa Valino de Bleier v. Uruguay*, views adopted on 29 March 1982, para. 13.3; No. 107/1981, *Maria del Carmen Quinteros Almeida v. Uruguay*, views adopted on 21 July 1983, para. 11; No. 992/2001, *Louisa Bousroual v. Algeria*, views adopted on 30 March 2006, para. 9.4.
52. The author notes that the Libyan authorities have failed to properly and adequately address and investigate (see below) his claims of torture despite compelling evidence of it provided by medical documentation and have failed to properly and adequately provide a plausible explanation as to the injuries he sustained. They have thus not fulfilled the burden of proof. The Committee is requested to draw inferences from this pursuant to its established case-law to come to finding of a violation of Article 7 of the Covenant.

Classification of treatment of the author

53. The author submits that the severity of the ill-treatment was such as to be characterised as torture. In this context he points to the following aspects:
 - The ill-treatment was used to extract incriminating confessions against himself and his co-defendants;
 - Very cruel methods, described above was applied during lengthy period of time in order to bring the author to a confession;
 - A number of acts of ill-treatment by themselves warrant the categorisation as torture: use of electric shocks attached among others to genitals, anal rape. However also the cumulative effects of the other abuse, such as sleep deprivation, keeping in dog cages, tying by the hands to iron bars in standing position, forced running, threats, questioning under sedation, amount to torture as well keeping in mind the duration of the treatment, the mental state of the author, warrant the conclusion that the author was subjected to torture.

Relevant case-law

54. In support of the conclusion that the author has been subjected to torture the applicant refers to Article 1 of the UN against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT) which provides:

For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession,

punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

55. The author submits that the treatment he was subjected to corresponds to the definition provided for in the UN CAT.

56. Furthermore, in its general comment No 20 to Article 7 of the Covenant the Committee has stated:

4. The Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.

5. The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim.

57. The ill-treatment, as described above, was particularly brutal and cruel. It was aimed at extracting a confession for the purposes of the author's criminal prosecution.

Conclusion as regards material aspects of torture

58. The author requests the Committee to conclude to a violation of Article 7 by the Respondent State as regards the actual torture to which he was subjected.

Use of drugs in order to obtain a confession

59. The author refers to the statement of **major Salim Jum'a Salim** (see above) who confirms that the author at one point was sedated before interrogation in order to obtain a further confession from him. The author submits that this resulted in medical experimentation on him without his consent and thus violated Article 7 in this respect. He refers in this respect to general comment No. 07 [16], 27-07-1982, Article CCPR-7, Sources: A/37/40 (1982) Annex V (pp. 94-95) ; CCPR/C/Rev.1, (pp. 6-7):

3. In particular, the prohibition extends to medical or scientific experimentation without the free consent of the person concerned (article 7, second sentence). The Committee notes that the reports of States parties have generally given little or no information on this point. It takes the view that at least in countries where science and medicine are highly developed, and even for peoples and areas outside their borders if affected by their experiments, more attention should be given to the possible need and means to ensure the observance of this provision. Special protection in regard to such experiments is necessary in the case of persons not capable of giving their consent.

60. Evidently, the administration of the drugs had nothing to do with any legitimate scientific and medical practice, which would have been necessitated by the author's needs. Quite to the contrary, there was no medical or other necessity to administer the drugs to the author, let alone without his consent. The only reason to use the drugs was to break his will and influence ability

61. The author requests the Committee to conclude to a violation of Article 7 in view of the prohibited use of medication without his consent in order to obtain a confession.

Lack of an effective investigation into torture claims

62. The author submits that his and his co-defendants' allegations of torture were not adequately and effectively investigated by the authorities. Following an inadequate prosecution this has resulted in an acquittal of the perpetrators despite clear medical evidence and even confessions and statements confirming torture by some of the perpetrators.
63. It must be underlined that at the first occasion where this was possible the author put forward his complaints in court as early as 2000. His complaints were not followed up by the People's Court nor by the prosecutor.
64. It was not until 2002 that the prosecution acted upon his allegations of torture. The lapse of time made it practically impossible to conduct a meaningful forensic and medical investigation. Thus the forensic doctor was unable to establish the time of occurrence of the wounds on the author's body which bore clear signs of torture.
65. In this context the author firstly refers to general comment on article 7, No. 20 [44], adopted on 3 April 1992, paragraph 14 in which the Committee has stated:

Article 7 should be read in conjunction with article 2, paragraph 3, of the Covenant. In their reports, States parties should indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by article 7 as well as appropriate redress. The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective. The reports of States parties should provide specific information on the remedies available to victims of maltreatment and the procedures that complainants must follow, and statistics on the number of complaints and how they have been dealt with.

66. The Committee has ruled that for a remedy against torture to be effective, it should be judicial in nature, and lead to an effective investigation, judgement and punishment of those responsible, and reparation.⁴
67. In the case of *Mohammed Alzery v. Sweden* (Communication No. 1416/2005) the Committee stated:

the State party's obligation to conduct a prompt, independent and impartial investigation into the events that took place. [...] While the thoroughness of the investigation for that purpose is not in doubt, the systemic effect was to seriously prejudice the likelihood of undertaking effective criminal investigations at both command and operational levels of the Security Police. In the Committee's view, the State party is under an obligation to ensure that its investigative apparatus is organised in a manner which preserves the capacity to investigate, as far as possible, the criminal responsibility of all relevant officials, domestic and foreign, for conduct in breach of article 7 committed within its jurisdiction and to bring the appropriate charges in consequence. Because such cases nevertheless occur, it follows from article 7, read

⁴ Referring to Communication No. 612/1995, *José Vicenté et al. v. Colombia*, views adopted on 19 August 1997, para. 5.2; Communication No. 563/1993, *Bautista de Arellana v. Colombia*, views adopted on 27 October 1995, para. 8.2; Communication No. 4/1977, *William Torres Ramirez v. Uruguay*, views adopted on 23 July 1980, para. 5. Counsel also refers to general comment No. 26.

together with article 2 of the Covenant, that States must ensure an effective protection through some machinery of control. Complaints about ill-treatment must be investigated effectively by competent authorities. Those found guilty must be held responsible, and the alleged victims must themselves have effective remedies at their disposal, including the right to obtain compensation.

68. In the case of the Larisa Tarasova on behalf of her son, Alexander Kornetov, *Larisa Tarasova v. Uzbekistan*, Communication No. 1057/2002, views adopted on 20 October 2006, the Committee observed:

The Committee recalls that when a complaint against maltreatment contrary to article 7 is lodged, a State party is under a duty to promptly and impartially investigate it.⁵ In the circumstances of the present case, and in the absence of any pertinent information submitted by the State party in this relation, due weight must be given to the author's allegations. Accordingly, the Committee decides that the facts as presented disclose a violation of article 7, read together with article 14, paragraph 3 (g), of the Covenant.

69. The facts described above show that the investigation into the author's allegations was neither prompt nor effective. Furthermore, after a clearly flawed trial where undisputed evidence was available of Libyan army officers who had witnessed and even themselves applied torture to the author (see above ...), all those standing trial were acquitted. The trial can be described in no other way than cosmetic to mask the marked unwillingness of the Libyan state to genuinely bring the perpetrators of the torture against the author to justice.

Conclusion as regards the lack of an effective investigation

70. The Committee is invited to conclude to a violation of Article 7 CCPR on account of the failure of the Libyan State conduct a prompt, effective, meaningful and comprehensive investigation into the author's allegations of torture and the failure to punish those responsible for it.

Anguish in view of execution following an unfair trial in case of imposition of the death penalty

71. In case the death penalty will be imposed the author submits the following. The imposition of a death sentence after an unfair trial will amount to subjecting him wrongfully to the fear that he will be executed. This constitutes a violation of Article 7. See HRC Communication No. 1421/2005, *Francisco Juan Larrañaga v. The Philippines*, views adopted on 24 July 2006:

7.11 With regard to the alleged violation of article 7, the Committee considers that to impose a death sentence on a person after an unfair trial is to subject that person wrongfully to the fear that he will be executed. In circumstances where there is a real possibility that the sentence will be enforced, that fear must give rise to considerable anguish. Such anguish cannot be dissociated from the unfairness of the proceedings

⁵ general comment on article 7, No. 20 [44], adopted on 3 April 1992, paragraph 14.

underlying the sentence. Indeed, as the Committee has previously observed,⁶ the imposition of any death sentence that cannot be saved by article 6 would automatically entail a violation of article 7. The Committee therefore concludes that the imposition of the death sentence on the author after the conclusion of proceedings which did not meet the requirements of article 14 of the Covenant amounts to inhuman treatment, in violation of article 7.⁷

72. The author requests the Committee to conclude to a violation in this respect, in case he is sentenced to the death penalty.

C. Violation of article 9 ICCPR

Article 9 provides, insofar as relevant here:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

The author's submissions on Article 9 §1 – Non-compliance with national procedures

73. The Committee has pointed out that an arrest and detention are considered arbitrary if they are not based on grounds and procedures established by law.⁸
74. According to Libyan law, the author should have been brought before the prosecution service within 48 hours of his arrest. This was however not done until three months later, on 16 May 1999. Even then, the authorities continued to keep him in incommunicado detention until 30 November 1999 (**Annex 11**), when his family was finally allowed to see him.

⁶ Communication No. 588/1994, *Errol Johnson v. Jamaica*, views adopted on 22 March 1996, paras. 8.2 and 8.3.]

⁷ European Court of Human Rights, *Öcalan v. Turkey*, application No. 43221/99, 12 May 2005, paras. 167-175.

⁸ See general comment 08 [16], para. 4

The author's submissions on Article 9 §2

75. The author was not informed promptly of the charges against him. Following his arrest he was held incommunicado without access to a lawyer while he was being tortured to sign a fabricated confession prepared in advance. At the same time he was not made aware of the underlying charges and facts.
76. In Communication No. 43/1979, *Drescher Caldas v. Uruguay*, views adopted on 21 July 1983, para. 13.2 the Committee held:
- 13.2 With regard to the author's contention that her husband was not duly informed of the reasons for his arrest, the Committee is of the opinion that article 9 (2) of the Covenant requires that anyone who is arrested shall be informed sufficiently of the reasons for his arrest to enable him to take immediate steps to secure his release if he believes that the reasons given are invalid or unfounded. It is the view of the Committee that it was not sufficient simply to inform Adolfo Drescher Caldas that he was being arrested under the prompt security measures without any indication of the substance of the complaint against him.
77. It was not until he was brought before the prosecutor on 16 May 1999 that the author was finally properly informed of the indictment against him, still without legal counsel (see facts as described above paras. 1-12).
78. Throughout the entire period of incommunicado detention the author was not properly informed of the reasons of his detention which prevented him from successfully challenging it.

The author's submissions on Article 9 §3

79. The author was not brought promptly before a 'judicial authority'. As noted above it was not until 7 January 2000 that the author made his first appearance in court. Prior to that he was only taken to the Prosecutor, firstly on 16 May 1999. It should be noted that the prosecutor is not considered a judicial authority within the meaning of Article 9 § 3.
80. The Committee has repeatedly held that the right to be brought "promptly" before a judicial authority implies that delays must not exceed a few days, and that incommunicado detention as such may violate article 9, paragraph 3.⁹ See also Communication No. 1177/2003, *Willy Wenga Ilombe and Nsii Luanda Shandwe v. Democratic Republic of the Congo*, views adopted on 17 March 2006, in which the Committee held:
- As to the alleged violation of article 9, paragraph 3, the Committee takes note of the authors' claim that they were detained for 9 and 11 months, respectively, without ever being brought before a judge. It recalls that article 9, paragraph 3, provides that anyone arrested or detained on a criminal charge has to be brought promptly before a judge or other officer authorized by law to exercise judicial power, and that pursuant to general comment No. 8 (16), such delays must not exceed a few days.
81. The author refers e.g. to the Committee case law in which a delay of one week was

⁹ Communication No. 1128/2002, *Rafael Marques de Morais v. Angola*, views adopted on 29 March 2005, para. 6.3. See also general comment No. 8 (16), para. 2.

found to be a breach of article 9, paragraph 3.¹⁰

82. The author concludes that the Libyan authorities violated Article 9 § 3 of the Covenant.

D. Violation of article 10 ICCPR

Article 10 provides:

‘[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of a human person.’

The author’s submissions on Article 10

83. The author refers to his submissions under article 7. He contends that the treatment he was subjected to following his arrest also violated his rights under Article 10 of the Covenant.
84. In addition hereto the author also submits that he did not receive any medical care commensurate to his state of health during his detention in violation of article 10, paragraph 1, of the Covenant. He states that only after an abrupt deterioration of his state of health, he was hospitalized on 20 March 2001 (See facts §§ 13).

E. Violation of article 14 ICCPR

Article 14 paragraph 1 provides insofar as relevant for the purposes of the alleged violations in the present case:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. [...]

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

[...]

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and

¹⁰ See Communication No. 702/1996, *McLawrence v. Jamaica*, views adopted on 18 July 1997, para. 5.6.

examination of witnesses on his behalf under the same conditions as witnesses against him;
[...]
(g) Not to be compelled to testify against himself or to confess guilt.
[...]

The author's submissions on violations of the right to a fair trial

85. The following rights of the author were violated:

- the author was not informed of the charges against him until the start of the trial, on 7 January 2000;
- the author was not assigned a lawyer until 27 February 2000, ie. ten days after the start of the trial and a year after his arrest;
- for over a year, for the entire duration of the police investigation and the pre-trial proceedings, the author had no lawyer at all;
- the author was forced through torture to testify against himself;
- the author and his co-defendant Nassya Nenova were not assisted by a lawyer when they made admissions before the prosecutor;
- the court without providing sufficient grounds moved aside Prof. Montagnier and Dr. Collizzi's expert report (**annex 28**), despite every indication that this report exonerated the author and his co-defendants of guilt;
- the second search of Ms Vulcheva's home, during which the police "providentially" discovered five bottles of blood plasma, two of them contaminated – considered to be the main piece of incriminating evidence – was conducted without the presence of the accused or a defence lawyer;
- the inconsistencies in this "discovery" – particularly the fact that the analyses of the bottles were carried out in March 1999 whereas the search of Ms Vulcheva's home took place a month after, that the prosecution never produced the records of the searches, and finally that the court itself mistook the findings of one search for the findings of the other – go to prove that it was probably completely fabricated.
- the case has lasted unreasonably long. The judgment of the first instance court was pronounced more than five years after the author was arrested;

The author's submissions specifically with respect to torture and undue duress to provide a confession, in violation of article 14 § 3 (g)

86. The author retracted his confession obtained under torture during the preliminary investigation, but the court considered that this was a defence strategy and dismissed his claim of torture on the grounds that (a) the policeman said to be responsible denied in court that he had committed torture, and (b) because during the trial, the author would not have presented to the court any unquestionable evidence that he was beaten by the

police officers; it also refused to take into account the fact that the police officers were accused of unlawful and groundless detention of him with use of illicit methods against him.

87. An appeal to the Supreme Court was admissible, however, without examining the claims of torture. Thus, the omission of the Libyan Courts to investigate the allegations of torture and ill-treatment corresponds to a violation of this paragraph, since the Human Rights Committee has noted that '[t]he law should require that evidence provided by means of such methods or any other form of compulsion is wholly unacceptable. In order to safeguard the rights of the accused under paragraphs 1 and 3 of article 14, judges should have authority to consider any allegations made of violations of the rights of the accused during any stage of the prosecution'.¹¹
88. The requirement of an impartial tribunal requires that allegations of torture and ill-treatment are investigated promptly and impartially by competent authorities. However, no effective investigation has taken place. As a result, Libya did not fulfil its obligations under the Covenant.

VI. Conclusion

89. Since the requirements for the submission of an individual complaint pursuant to the ICCPR OP I have been met, the present claims are admissible under the Optional Protocol. Therefore, on behalf of the author, an examination of the alleged violations of the ICCPR by the Human Rights Committee is requested through the submission of this individual complaint.
90. In accordance with article 2, paragraph 3 (a), of the Covenant, Libya is under an obligation to provide the author with an effective remedy, which should include adequate reparation both for material and immaterial damage, to be determined at a later stage. Bearing in mind that, by becoming a party to the Optional Protocol, Libya has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, Libya 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 in case a violation has been established, the author wishes that the Human Rights Committee requests Libya to take measures to give effect to its obligations arising out of the Covenant and the First Optional Protocol and to take measures to prevent similar violations in the future.

Representative's signature:

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Prof. dr. Liesbeth Zegveld

¹¹ See general comment 13 [21], paras. 14-15; see general comment No. 20 (on article 7), forty-fourth session (1992), para. 14.

VII. Documentation referred to in the complaint

- Power of authority appointing Prof. dr. Liesbeth Zegveld as his representative (**Annex 1**).

I. Facts

- Letter from Benghazi Medical university concerning El Hagog's medical studies (**Annex 2**);

II. Torture

- Statement of Ashraf El Hagog Gomma on torture incurred by him before the Libyan Public Prosecutor, 16.6.2002 (**Annex 3**);
- Medical report establishing torture of Ashraf El Hagog Gomma 13.07.2002 (**Annex 4**);
- Medical reports concerning torture of Bulgarian nurses 13.07.2002 (**Annex 5**);
- Personal report of Mr Tatchev concerning experiencing and witnessing torture of the nurses 28.5.2000 (**Annex 6**);
- Detailed personal statement Ashraf El Hagog Gomma on torture to Human Rights foundation 17-02-2003 (**Annex 7**);
- Testimonies concerning torture of Ashraf El Hagog Gomma (**Annex 8**)
 - o Sergeant-major Izzudin Mukhtar Saleh Al Baraki, sergeant-major at the Directorate General for Criminal Investigation, guard of the author, 29.7.2002
 - o major Salim Jum'a Salim, chief of the police station for training dogs, 29.7.2002 and 30.7.2002;
- Letter of the head of the prosecutor's office prohibiting that any contact be made with the detainees in the HIV case, 29.06.1999 (**Annex 9**);
- Council of Europe report on events around HIV case, reporting on torture of the applicant and on unfair trial (**Annex 10**);
- OMCT, reports on torture in the author's case (**Annex 11**);
- HRW, Libya: Foreign health workers describe torture (**Annex 12**);
- HRW, Libya: Rescind death penalty for foreign medical workers (**Annex 13**);
- Amnesty International, Libya: Time to make human rights a reality (**Annex 14**);
- Amnesty International, Libya: Six foreign medics should be released (**Annex 15**);
- UN Rapporteur on torture, Urgent appeal and reply by the Libyan authorities (**Annex 16**);
- Hospital admission and documents related to treatment (**Annex 17**);
- Newspaper articles 10 August 2007, acknowledgement torture claims (**Annex 18**).

III. Trial

- Decree from the Administration of the President of Bulgaria commuting the death sentence to imprisonment for life and Dutch translation (**Annex 19**);
- Judgment of 19.12.06 in criminal case and Dutch translation (**Annex 20**);
- Confiscated (personal) items during the house-search of 07/09/2002 for the first trial against Ashraf Ahmed Gomma El Hagog and Dutch translation (**Annex 21**);
- Appeal to Supreme Court against judgment of 19 December 2006 and Dutch translation (**Annex 22**);
- Pleadings before Benghazi Criminal Court after referral by Supreme Court and Dutch translation (**Annex 23**);
- Indictment and Dutch translation (**Annex 24**);
- Indictment in defamation case criminal/civil and Dutch translation (**Annex 25**);
- Counsel's defence pleadings in the defamation case and Dutch translation (**Annex 26**);
- Newspaper articles concerning transfer and release author (**Annex 27**).

IV. Medical documents submitted in the criminal case

- Final report of Prof. Montagnier and Prof. Colizzi to Libyan criminal court on the Nosocomial HIV infection at the Al-Fateh Hospital Benghazi (**Annex 28**);
- Final report by the Libyan national experts committee in the criminal case on the origins of the HIV infection in relation to the author (**Annex 29**);

VIII. General supporting Documentation

I. Facts

- Chronology of events described by the Bulgarian News Agency (**Annex 30**)

II. Torture

- Al-Gadaffi Foundation statement (**Annex 31**);
- Open letter to the President of the Supreme Court of Lybia (**Annex 32**)

III. Medical documents submitted in the criminal case

- Report on AIDS in Libya in 2003 (**Annex 33**)