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HUMAN RIGHTS COMMITTEE
Eighty-eight session
16 October – 3 November 2006

VIEWS

Communication No. 1057/2002

Submitted by:	Mrs. Larisa Tarasova (not represented by counsel)
Alleged victim:	Alexander Kornetov, author's son
State party:	Uzbekistan
Date of communication:	5 March 2002 (initial submission)
Document references:	Special Rapporteur's rule 92/97 decision, transmitted to the Sate party on 5 March 2002 (not issued in document form)
Date of adoption of Views:	20 October 2006

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of sentence to death after unfair trial; duty to investigate allegations of ill-treatment of a detainee

Substantive issue: Torture; Unfair trial; Right to life

Procedural issues: Evaluation of facts and evidence; substantiation of claim

Articles of the Covenant: 6; 7; 10; 14; 15; 16

Article of the Optional Protocol: 2

On 20 October 2006 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. 1057/2002.

[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

Eighty-eighth session

concerning

Communication No. 1057/2002[*]

Submitted by:	Mrs. Larisa Tarasova (not represented by counsel)
Alleged victim:	Alexander Kornetov, author's son
State party:	Uzbekistan
Date of communication:	5 March 2002 (initial submission)

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

Meeting on 20 October 2006,

Having concluded its consideration of communication No. 1057/2002, submitted to the Human Rights Committee on behalf of Mr. Alexander Kornetov 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 is Mrs. Larisa Tarasova, an Uzbek national of Russian origin, who submits the communication on behalf of her son, Alexander Kornetov, also Uzbek of Russian origin born in 1977, currently imprisoned in Uzbekistan and who, at the time of submission of the communication awaited execution following a death sentence imposed on him by the Tashkent

[*] The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

Regional Court on 7 August 2001. The author claims that her son is a victim of violation by Uzbekistan of his rights under article 6; 7; 10; 14; 15; and 16, of the Covenant[1]. She is not represented.

1.2 On 5 March 2002, the Human Rights Committee, acting through its Special Rapporteur on New Communications and Interim Measures, pursuant to rule 92 of the Committee's rules of procedures, requested the State party not to execute Mr. Kornetov while his case was under consideration by the Committee. Subsequently, the State party informed the Committee that on 19 February 2002, the Supreme Court of Uzbekistan had modified the author's conviction and commuted the death sentence to 20 years' imprisonment.

The facts as presented by the author

2.1 On 11 January 2001, the author's son was arrested by the police on suspicion of having unlawfully sold, on two occasions, an apartment that did not belong to him. Although officially he was investigated for fraud, he was put under "physical pressure" by investigators and forced to confess guilt in the murder of the owner of the apartment – one Mrs. P., whose body, according to the police, had been discovered in a river earlier, on 27 September 2000. A friend of the author's son (one Yemelin) was also arrested and forced to admit his involvement in the murder.

2.2 On 7 August 2001, the Tashkent Regional Court found the author's son guilty of fraud, robbery, and murder and sentenced him to death. His co-defendant was sentenced to 19 years' imprisonment. The author's son was found guilty of having killed Mrs. P., with the assistance of Yemelin, in order to sell her belongings and her apartment, as well as for robbing other apartments. On 26 December 2001, the Appeal Instance (Criminal College) of the Tashkent Regional Court upheld the judgment of 7 August 2001, confirming the death sentence. On 7 January 2002, Mr. Kornetov's lawyer appealed to the President of the Supreme Court under a supervisory procedure, asking for the reopening of the case and further investigations. On 19 February 2002, the Supreme Court of Uzbekistan commuted the death sentence to 20 years' imprisonment.

2.3 According to the author, her son's guilt was not established beyond reasonable doubt, and his sentence of 7 August 2001 was unfounded, severe, and based on indirect evidence, in the absence of the weapon of the crime. In substantiation of her allegations, she stated that:

(a) the conclusions of medical forensic experts in connection with the body discovered on 27 September 2000 did not permit an identification, beyond reasonable doubt, that the body in question (whose hands and head were missing) was that of Mrs. P. In addition, ADN tests on the discovered body and the body of Mrs. P.'s mother who had died a few years earlier did not confirm that the discovered body was indeed that of Mrs. P.

(b) the police record of the discovery of the body did not mention a crucial element of evidence – a small hand written note by Mrs. P. – which was not discovered in the pockets of the jeans of the body at the time of discovery; this note was found later, during a forensic examination, and served as evidence for the identification of the body. According

[1] The Optional Protocol entered into force for the State party on 28 December 1995.

to the author, the police could have taken the note from Mrs. P.'s apartment and later hidden it in the body's clothes, so as to make it easier to accuse her son.

(c) the passport of Mrs P., as well as the documents related to ownership of the flat and the keys to her apartment were discovered in the author's son's flat, but they were left with him by Mrs. P., as a guarantee for the down payment he made to her as evidence of his intention to buy her flat. In this connection, the author affirms that she informed the investigators that Mrs. P. intended to travel to Russia to obtain the agreement of her brother (and co-owner of the flat) for the property transaction, and had two different passports; this was ignored by the investigators, and no inquiry was conducted.

(d) her son was arrested on 11 January 2001 as a fraud suspect, but in fact he was forced to confess guilt in the murder of P., and "wrote his confessions" on 16 and 17 January;

(e) once she became aware of her son's arrest - on 15 January 2001 - she immediately went to the police station where he was kept, and saw him in an office, writing down a text being dictated by an investigator. At some point, the investigator beat him on the head. When the author intervened, the investigator ordered her to leave "if she wanted to see her son alive". On 17 January, she witnessed how three other police officials kicked her son in the investigator's office. In this context, she explains that she filed a complaint. According to a judgment of the Supreme Court No. 1 of 20 February 1996, evidence obtained by unlawful methods, such as physical influence or moral pressure, is inadmissible;

(f) the chief investigator of her son's case, one Ch., investigated other fraud charges against her son, that led to his earlier fraud conviction in 1997. The author declares that in 1997, Ch. had extorted a large sum of money from her for the release of her son (that finally did not occur). She had appealed to have another investigator placed in charge of her son's case, but allegedly her application was even not accepted in the Police station;

(g) the court called only witnesses against her son, and "simply ignored" witnesses on his behalf.

2.4 The author claims that contrary to article 138 of the Criminal Execution Code and article 6, paragraph 4, of the Covenant, while on death row, her son was informed by penitentiary authorities that he had to sign a declaration to the effect that he renounced his right to seek a pardon, which he did. The author asked for explanations and was informed, by letter of 22 January 2001, that when her son received a copy of the judgment of the Tashkent Regional Court of 26 December 2001, he was duly informed of his right to request a presidential pardon and of the right to be assisted by a lawyer when preparing this request. According to the authorities, her son refused to file a pardon request, without giving any reasons. A record in this connection was made and was sent to the Presidential administration.

The complaint

3. The author claims that her son's rights under articles 6; 7; 10; 14; 15; and 16 of the Covenant, have been violated.

State party's observations

4. The State party presented its comments on 22 May 2002. It recalls that the author's son's guilt was established and he was correctly sentenced to death on 7 August 2001, by the Tashkent Regional Court. On 26 December 2001, his conviction was confirmed by the appeal body of the Tashkent Regional Court. The State party also examines the facts of the criminal case. Finally, it indicates that on 19 February 2002, the Supreme Court commuted Mr. Kornetov's death sentence to 20 years' imprisonment.

Author's comments

5. The author presented additional comments on 2 September 2002, 7 April 2003, and 25 February 2005. She reiterates that her son is innocent and reaffirms that he was convicted on insufficient grounds. In particular, she reiterates that her son confessed guilt under duress at the beginning of the preliminary investigation, and that at the opening of the trial, he complained about his ill-treatment to the court and gave the names of the officials responsible for his beatings. According to the author, her son's affirmations in this context were not reflected in the trial records, and the court did not verify his affirmations.

Issues and proceedings before the Committee

Admissibility considerations

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that the same matter is not being examined under any other international procedure, and that the State party has not contested that domestic remedies have been exhausted. The requirements of article 5, paragraph 2 (a) and (b), of the Optional Protocol, are therefore met.

6.3 The author claims a violation of her son's right under article 6, paragraph 4, since after he was sentenced to death, the penitentiary authorities explained to him that he had to sign a declaration to the effect that he renounced his right to seek a pardon, which he did. Notwithstanding the content of paragraph 2.4 above, the Committee notes, however, that the author did file, on 8 January 2002, a pardon application with the President's office. In the circumstances, and in the absence of any other information in this relation, the Committee considers that the author has failed sufficiently to substantiate her claim, for purposes of admissibility, and accordingly this part of the communication is inadmissible under article 2, of the Optional Protocol.

6.4 The author has claimed a violation of her son's right to a fair trial under article 14, paragraph 1, and challenges the way the courts evaluated the evidence that led to her son's conviction. The Committee notes that these allegations relate primarily to the evaluation of facts and evidence. It recalls that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that it was clearly

arbitrary or amounted to a denial of justice[2]. In the absence of other pertinent information that would show that evaluation of evidence suffered from such deficiencies in the present case, the Committee considers that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The author has affirmed that contrary to article 14, paragraph 3 (e), the court only called witnesses against her son, and ignored the witnesses called on his behalf. The Committee notes that this allegation is not refuted by the State party. However, in the absence of more precise information that would corroborate this claim, the Committee considers that the author has failed sufficiently to substantiate this claim, for purposes of admissibility, and it is accordingly inadmissible under article 2, of the Optional Protocol.

6.6 The author has alleged in general terms that her son's rights under articles 15 and 16 were violated. In the absence of more detailed information in substantiation of these claims, the Committee considers that this part of the communication is inadmissible as unsubstantiated, under article 2, of the Optional Protocol.

6.7 The Committee considers that the remaining allegations, under articles 6; 7; 10; and 14, paragraph 3 (g), of the Covenant, have been sufficiently substantiated, for purposes of admissibility, and declares them admissible.

Consideration of the merits

7.1 The author has claimed that her son was beaten by police investigators to force him to confess guilt. She affirms that she personally witnessed, on two separate occasions, in the police premises, how investigators beat her son. She also adds that at the beginning of his trial, her son notified the court that he had been beaten and that his confession was obtained under duress, that he provided the names of the responsible officers, and that these complaints were neither recorded in the trial record nor investigated. 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[3]. 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.

7.2 In light of the above conclusion, the Committee considers that the author's claim does not raise a separate issue under article 10 of the Covenant.

7.3 The Committee recalls its jurisprudence to the effect that that the imposition of a death sentence after a trial that did not meet the requirements for a fair trial amounts also to a violation of article 6 of the Covenant[4]. In the present case, however, the alleged victim's death sentence imposed on 7 August 2001, confirmed on appeal on 26 December 2001, had already been

[2] See Communication No 541/1993, Errol Simms v. Jamaica, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.
[3] General Comment on article 7, No. 20 [44], adopted on 3 April 1992, paragraph 14.
[4] See, inter alia, Siragev v. Uzbekistan, Communication No. 907/2000, Views adopted on 1 November 2005, paragraph 6.4.

commuted by the Supreme Court on 19 February 2002. The Committee considers that in the particular circumstances of the present case, the issue of the violation of the author's son's right to life has thus became moot.

8. 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 of the author's son's rights under articles 7 and 14 paragraph 3 (g), of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Kornetov with an effective remedy. The remedy could include consideration of a reduction of his sentence and compensation. The State party is also under an obligation to prevent similar violations in the future.

10. 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 in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested 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.]
