



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-fifth session
17 October – 3 November 2005

VIEWS

Communication No. 907/2000

<u>Submitted by:</u>	Nazira Sirageva (not represented by counsel)
<u>Alleged victim:</u>	Mr. Danis Siragev, the author's son
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	12 December 1999 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 19 January 2000 (not issued in document form)
<u>Date of adoption of Views:</u>	1 November 2005

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- Made public by decision of the Human Rights Committee.

Subject matter: Death sentence after an unfair trial

Procedural issues: none

Substantive issues: Right to have adequate time and facilities to prepare one's defence and to communicate with counsel; death sentence pronounced after an unfair trial.

Articles of the Covenant: 2, paragraph 3 (a); 6; 7; 10, paragraph 1; 14, paragraphs 3 (b), (d), (e), and (g); and 15, paragraph 1

Articles of the Optional Protocol: 2 and 5, paragraph 2 (a)

On 1 November 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 907/2000. The text of the Views is appended to the present document.

[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-fifth session

concerning

Communication No. 907/2000**

Submitted by: Nazira Sirageva (not represented by counsel)
Alleged victim: Mr. Danis Siragev, the author's son
State party: Uzbekistan
Date of communication: 12 December 1999 (initial submission)

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

Meeting on 1 November 2005,

Having concluded its consideration of communication No. 907/2000, submitted to the Human Rights Committee on behalf of Mr. Danis Siragev under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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

1.1 The author of the communication is Mrs. Nazrira Sirageva, an Uzbek national of Tatar origin, currently residing in France. She submits the communication on behalf of her son, Danis Siragev, an Uzbek national of Tatar origin born in 1975, who at the time of submission of the communication was under sentence of death and detained and awaiting execution in Tashkent. The author claims that her son is a victim of violations by Uzbekistan of articles 2, paragraph 3 (a); 6; 7; 10, paragraph 1; 14, paragraphs 3 (b), (d), (e), and (g); and 15,

** 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. Maurice Glèlè Ahanhanzo, 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.

paragraph 1, of the International Covenant on Civil and Political Rights¹. She is not represented by counsel.

1.2 Under rule 92 (old rule 86) of its Rules of procedure, the Committee, acting through its Special Rapporteur for New Communications and Interim Measures, requested the State party, on 19 January 2000, not to carry out the death sentence against Mr. Siragev, while his case was under consideration by the Committee. A further submission from the author (dated 6 December 2000), stated that on an unspecified date, Mr. Siragev's death sentence was commuted.

Factual background

2.1 Danis Siragev was a member of the Uzbek rock band "Al-Vakil". On 26 May 1999, he and another member of the band – Mr. Arutyunyan² - were arrested in Moscow following a warrant issued by the Uzbek authorities for the murder and robbery, in April 1998, in Tashkent, of one Laylo Alieva (a pop star), as well as the attempted murder of her son. They were transferred to Tashkent on 3 June 1999.

2.2 By judgment of 3 November 1999, Messrs Siragev and Arutyunyan were found guilty of the murder of Mrs. Alieva and of robbing her jewellery and were sentenced to death. On 20 December 1999, the Supreme Court confirmed the judgment.

The claim

3.1 It is alleged that Mr. Siragev was mistreated and tortured during the investigation to make him confess guilt, to such an extent that he had to be hospitalized. In substantiation of her claim, the author affirms that, in a phone conversation of 15 July 1999, she was informed by the wife of her ex- husband that her son was in the "medical section" of the detention facility, allegedly because he was beaten and suffered broken ribs. Allegedly, the investigation concluded that Mr. Siragev had been beaten by his co-detainees.

3.2 Mr. Siragev's sentence is said to be excessive, as the Tashkent City Court based its judgment on his and Arutyunyan's sole confessions, in the absence of "any witnesses, material proof or fingerprints", and on the depositions of individuals who disappeared shortly after the end of the police investigation, which means that their depositions were not re-confirmed in court. The Supreme Court, allegedly, in a session of 35 minutes, validated these procedural mistakes and violations committed by the investigators and the first instance court.

3.3 It is alleged that Mr. Siragev's "ex officio" counsel was assigned to him only pro forma and the author had no financial means to hire another lawyer. According to the author, this counsel met only "two or three times" with her son, always in the presence of an investigator.

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

² Mr. Arutyunyan's case was examined by the Committee. See Communication No. 917/2000, Arsen Arutyunyan v. Uzbekistan, Views adopted on 29 March 2004 (violations of articles 14, paragraph 3 (d) and 6.

In addition, counsel was only allowed to examine the Tashkent City Court's records a few minutes before the beginning of the hearing before the Supreme Court³.

State party's observations

4.1 By Notes Verbales of 13 December 2000, 27 February 2001 and 17 December 2002, the State party was requested to submit to the Committee information on the admissibility and merits of the communication. The Committee notes that such information was only received on 21 October 2005, i.e. during the consideration of the communication by the Committee. The Committee regrets the State party's significant delay in providing information with regard to admissibility and the substance of the author's claims. It recalls that it is implicit in the Optional Protocol that States parties make available to the Committee all information at their disposal, within the time-limits set up in rule 97 of the Committee's rules of procedure.

4.2 On 12 October 2005 (Note verbale received by fax on 21 October 2005), the State party challenges admissibility and merits of the communication and states, in particular, that the allegations in relation to violations of Mr. Siragev's rights during the preliminary investigation and during the court trial are "groundless".

4.3 The State party recalls that Mr. Siragev was sentenced to death by the Tashkent City Court of 3 November 1999, and that this sentence was upheld, on 20 December 1999, by the Supreme Court of Uzbekistan. He and his co-defendant Mr. Arutyunyan were found guilty of murder and robbery. After a request for a supervisory review by the Chairman of the Supreme Court, the Supreme Court commuted their death sentence to 20 years of deprivation of liberty on 31 March 2000. Moreover, under the provisions of a Presidential Amnesty Decree of 30 April 1999, their prison terms were further reduced by 25 % to 15 years.

4.4 According to the State party, Messrs Arutyunyan and Siregev's guilt was confirmed not only on by their confessions, but also by the testimonies of other witnesses, the conclusions of medical-forensic experts, records of the examination of the crime scene, and other evidence of probative value. The State party affirms that Messrs. Arutyunyan and Siragev's acts were qualified correctly (by the courts).

4.5 By another Note verbale dated 12 October 2005, the State party re-submits its follow-up reply of 31 December 2004, in case of Arutyunyan v. Uzbekistan, Communication No. 917/2000 (Annual report A/60/40, Volume II, annex VII), where, in particular, the State party affirmed that (a) it was "groundless to say that investigation of crimes committed by Arutyunyan and Siragev was conducted allegedly through physical or mental pressure on them"; (b) that during the investigation Arutyunyan and Siragev were interrogated with participation of defense lawyers, and they did not complain in court about any illegal treatment against them during investigation.

³ The case file contains a request for adjournment by Mr. Siragev's lawyer, dated 17 December 1999, where the lawyer requests the Supreme Court to adjourn the session as he was unable to compare the court records ("protocol") of the trial before the Tashkent City Court with his own notes in order to insure their exactitude. The Supreme Court allegedly had ignored his request.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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.

5.2 The Committee notes that the same matter is not being examined under any other international procedure, in line with the requirements of article 5, paragraph 2 (a), of the Optional Protocol.

5.3 The Committee has noted the alleged violation of Mr. Siragev's rights under articles 14, paragraphs 3 (d), (e), and (g); and 15. No information in substantiation of these claims has been adduced and the author has failed to substantiate these claims, for purposes of admissibility. Accordingly, these claims are inadmissible under article 2 of the Optional Protocol.

5.4 In relation to the claim that the trial of Mr. Siragev was unfair and his sentence excessive, and while regretting the State party's failure to provide any detailed information in this regard, the Committee notes that this claim primarily relates to the assessment of facts and evidence by national tribunals. It recalls that it is in general for the courts of States parties, and not for the Committee, to evaluate the facts and evidence in any particular case, and to interpret domestic legislation, unless the evaluation was arbitrary or amounted to a denial of justice⁴. The author has not advanced any information to this effect, for purposes of admissibility. In the circumstances, the Committee concludes that this claim is inadmissible under article 2 of the Optional Protocol.

5.5 The author has also claimed that while in detention, Mr. Siragev was beaten and tortured by investigators to make him confess, to the point that his ribs were broken and he had to be hospitalized. The State party has merely contended that the allegations that the author's son was subjected to physical or mental pressure were groundless, but it did not challenge the fact that the author's son was beaten and hospitalized. Under these circumstances, the Committee considers the allegations of violations of articles 7 and 10, paragraph 1, sufficiently substantiated for purposes of admissibility. Accordingly, this part of the communication is admissible.

5.6 The author has also claimed that Mr. Siragev was not allowed to meet in private with his designated lawyer during the investigation, and that, later, counsel was prevented from consulting the Tashkent City Court's records in preparation of the cassation appeal to the Supreme Court. The State party did not refute this allegation, but has only affirmed that he was interrogated with the participation of defence lawyer. Accordingly, the Committee considers that this part of the communication is admissible in as far as it appears to raise issues under articles 14, paragraph 3 (b), and 6, of the Covenant.

⁴ See for example Communication No. 541/1993, Errol Simms v. Jamaica, Inadmissibility decision of 3 April 1995, paragraph 6.2.

Consideration of the merits

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

6.2 The author has claimed that her son was beaten in detention and subjected to torture, by investigators, to make him confess guilt, to the extent that he had to be hospitalised. The State party has merely affirmed that this allegation was groundless, without contesting that while in detention, the author's son was mistreated and subsequently hospitalised, and without explaining whether any investigation took place in this relation nor contesting the author's allegation that investigators had affirmed that her son was in fact beaten by his co-detainees. The Committee must, in the circumstances, give due weight to the author's allegations that, while in custody, her son was beaten to the point of requiring hospitalization. It considers that a State party is responsible for the security of any person it deprives of liberty and, where an individual deprived of liberty receives injuries in detention, it is incumbent on the State party to provide a plausible explanation of how these injuries occurred and to produce evidence refuting these allegations. In light of the detailed and uncontested information provided by the author, the Committee concludes that in the present case, the treatment that Mr. Siragev was subjected to amounts to a violation of article 7 of the Covenant, in that the State party has not taken the necessary measures to protect him from serious ill-treatment. In light of this finding in relation to article 7, it is not necessary to separately consider the claims arising under article 10.

6.3 The author alleges that her son's right to properly prepare his defence was violated, because during the preliminary investigation, Mr. Siragev's lawyer was prevented from seeing him confidentially, and because counsel was allowed to examine the Tashkent City Court's records only shortly before the hearing in the Supreme Court. In support of her allegation, she produces a copy of counsel's request for an adjournment, addressed to the Supreme Court on 17 December 1999, which affirms that under different pretexts, counsel had been denied access to the Tashkent City Court's records. This request was dismissed by the Supreme Court, allegedly without any explanation. On appeal, counsel claimed that he was unable to meet privately with his client to prepare his defence; the Supreme Court allegedly failed to address this issue as well. The State party has not challenged this, it has only merely affirmed that Mr. Siragev was represented by a lawyer during preliminary investigation. In the absence of any other observations from the State party on this claim, the Committee considers that article 14, paragraph 3 (b), has been violated in the instant case.

6.4 The Committee recalls that the imposition of a death sentence upon conclusion of a trial in which the provisions of the Covenant have not been respected, constitutes a violation of article 6 of the Covenant, if no further appeal against the death sentence is possible⁵. In Mr. Siragev's case, the final death sentence was pronounced without the requirements for a fair trial set out in article 14 having been met. This results in the conclusion that the right protected under article 6 has also been violated.

⁵ See, for example, Communication No 775/1997, *Brown v. Jamaica*, Views adopted on 23 March 1999, paragraph 6.15.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the Covenant, is of the view that the facts before it disclose a violation of articles 7 and 14, paragraph 3 (b), read together with article 6 of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Siragev with an effective remedy. The Committee notes that violation of article 6 was rectified by the commutation of Mr. Siragev's death sentence. The remedy could include consideration of a further reduction of his sentence and compensation. The State party is also under an obligation to prevent similar violations in the future.

9. 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.]
