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HUMAN RIGHTS COMMITTEE
Eighty-ninth session
12 – 30 March 2007

VIEWS

Communication No. 1043/2002

Submitted by:	Mrs. Tamara Chikunova (not represented by counsel)
Alleged victim:	Dimitryi Chikunov, author's son, deceased
State party:	Uzbekistan
Date of communication:	17 July 2000 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 8 January 2002 (not issued in document form)
Date of adoption of Views:	16 March 2007

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of death sentence after unfair trial and absence of legal representation in capital case; duty to investigate allegations of ill-treatment; right to seek pardon.

Substantive issue: Torture; Unfair trial; Right to life

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

Articles of the Covenant: 6; 7; 9, 10; 14; 16

Article of the Optional Protocol: 2

On 16 March 2007, 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.1043/2002.

[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-ninth session

concerning

Communication No. 1043/2002[**]

Submitted by:	Mrs. Tamara Chikunova (not represented by counsel)
Alleged victim:	Dimitryi Chikunov, author's son, deceased
State party:	Uzbekistan
Date of communication:	17 July 2000 (initial submission)

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

Meeting on 16 March 2007,

Having concluded its consideration of communication No. 1043/2002, submitted to the Human Rights Committee on behalf of Mr. Dimitryi Chikunov 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. The author is Mrs. Tamara Chikunova, a Russian national residing in Uzbekistan. She submits the communication on behalf of her son, Dimitryi Chikunov, born in 1971 and executed on 10 July 2000 pursuant to a death sentence pronounced by the Tashkent Regional Court on 11 November 1999. She claims that her son is a victim of violations by Uzbekistan of his rights

[**] The following members of the Committee participated in the examination of the present communication: Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

under article 6; article 7; article 9; article 10; article 14; and article 16 of the Covenant[1]. She is unrepresented.

Factual background

2.1 On 17 April 1999, the author's son was arrested in relation to the double murder of his business partners Em and Tsai that occurred near Tashkent on 16 April 1999. He was accused of shooting them with an automatic pistol because he could not repay his debts to them. He was also charged with fraud and abuse of confidence, for having, in 1996, and together with another individual, S., prepared a false contract for a loan of 2 millions of Uzbek sums (divided between him and S.), on behalf of a Youth Centre "Em Matbuotchi", to the prejudice of the Social Insurance Fund.

2.2 During the first days following the arrest, the author's son was allegedly beaten and tortured by the investigators and was forced to confess his guilt. The author submits a copy of a letter from her son addressed to her on an unspecified date, in which he describes how he was treated. He affirms that immediately after his arrest, when placing him in the police car, the investigators violently pressed his head with the car's door against the chassis. In the Criminal Search Department premises, he was immediately beaten by several investigators with whatever item they found, including soda bottles. Afterward, as he refused to confess to the murders, he was called a pederast and threatened with rape, he was thrown on the floor, his trousers were removed and he was given severe kicks on his legs with a stone penis statue; he was not raped. Later, he was beaten to the point that he lost consciousness. He recovered consciousness when the investigators placed a gas-mask over his head and were obstructing the air valve to make him suffer. They also threatened him that they would bring his mother there and rape her in front of him. In the evening, he was brought to the place of the crime and one investigator allegedly called someone on his phone and gave him the order to "start" with Chikunov's mother. At this point, he agreed to confess guilt.

2.3 On 19 April 1999, the investigators asked the author to bring an extra set of clothes for her son. She did so, and a junior investigator, allegedly by mistake, gave her the old clothes. She affirms that the clothes were covered with spots of coagulated blood, and marks of shoes, allegedly resulting from her son's beatings[2]. She affirms that shortly after the receipt of the clothes, she was called by the investigators and asked to return them. An investigator came to her apartment and searched it, but could not find anything because, in the meantime, the author had given the clothes to relatives.

2.4 On 23 April 1999, the author complained about her son's indictment and torture to the President, the Parliamentary Ombudsman, the Prosecutor's Office, and the National Human Rights Centre. Her complaints were allegedly transmitted to the chief investigator in her son's case, M., against whose acts she was in fact complaining[3]. She claims that she asked to see her

[1] The Optional Protocol entered into force for the State party on 28 December 1995.
[2] The author submits photographs of the clothes.
[3] The author submits however a reply to « her complaints of 23 April, 12 and 13 May 1999 » by the Tashkent Regional Prosecutor's Office. The Prosecutor's Office informs her that her son's criminal case was grounded, that « as she was previously informed », the case was placed under the monitoring of the Prosecutor's Office leadership, the investigation is being conducted objectively, in the absence of criminal procedure violations, and after the end of the preliminary investigation, the case will be transmitted to court. The Prosecutor's Office also informs the

son, but allegedly was told that she had first to return the clothes. She also asked to meet with M., in vain.

2.5 The author's son was interrogated without the presence of a lawyer[4] on 17, 18, 19 and 28 April and on 6 May 1999, when he confirmed the location of the weapon of the crime and was brought to the crime scene to give details about the sequence of the events. The investigators appointed an ex officio lawyer, Mrs. Rakhmanmerdieva (R.), for her son only on 19 April 1999. The lawyer met with her client only once, on 21 April 1999, but allegedly the author's son was unable to speak with her in private and he was terrified because the meeting was held in the presence of the investigators who had previously tortured him.

2.6 On 20 April 1999, the author learned that her son had been assigned a lawyer, but the investigators revealed the lawyer's identity to her only in May 1999. The author then met with R. and inquired about her son's criminal case; the lawyer told her that her son was a murderer. The author asked under which articles of the Criminal Code precisely he was accused, but the lawyer could not remember. When the author expressed fears that her son was tortured, the lawyer refused to comment. On 17 June 1999, the author retained a private lawyer, Mrs. S., but the latter was prevented from acting until the end of the investigation, on 13 August 1999. She was absent during investigation hearings held on 10, 15, 16, 19, and 28 July.

2.7 In court, the author's son retracted his confessions as they were extracted under torture. He affirmed that during the night of the crime, his business partners had a meeting with one Salikhov, living in Russia, who was supposed to transmit to them a quantity of heroin that they intended to sell. The author's son accompanied them, and when they arrived at the meeting point, Chikunov was asked to leave the car and wait. Shortly after, he heard shots and saw Salikhov leaving the crime scene. Chikunov explained that he took the pistol out of the car and hid it, because he had provided it to one of his business partners the same day. He did not inform anyone as he was terrified.

2.8 The court inquired about the ill-treatment allegations: (a) it interrogated as a witness Chikunov's previous lawyer, R., who affirmed that he had confessed his guilt freely and voluntarily, and that she had not noted any marks of beatings on his body; (b) it heard several investigators, including G. (chief of the Criminal Search Department), the investigators I., B., as well as others. All confirmed that Chikunov made the confessions voluntarily, without any coercion; he was not beaten, and "expressed his desire to show the place where he has hidden the

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author that her allegations, that her son was subjected to unlawful methods of investigation i.e. he was beaten by the investigators, were not confirmed.

[4] In this regard, the author affirms that article 51 (4) of the Criminal Code requires the compulsory presence of a lawyer in relation to persons that risk death sentences.

crime weapon"[5]. The Court concluded that the initial confessions were voluntary, and the new version was given with the aim to avoid criminal liability.

2.9 The author notes that her son's initial lawyer R. was brought to court by car by one of the investigators. On an unspecified date, the author complained to the Ministry of Justice about R.'s acts. On 28 January 2000, the Ministry of Justice informed her that an internal inquiry was in process, and the author's allegations were confirmed. As a consequence, on 17 January 2000, the Legal Qualification Commission examined the case and withdrew R.'s practicing license, because of the "violation of the legal norms in force, and for breach of lawyer's ethics".

2.10 On 18 November 1999, the author's son's counsel filed a cassation appeal in the Supreme Court, challenging the judgment of 11 November 1999, affirming that her client's confessions had been extracted under torture, claiming several criminal procedure violations, and asking that the case to be sent back for further investigation. On 24 January 2000, the Supreme Court examined the case and found Chikunov's claims of innocence to be without merit, invented, and not borne out by the content of the case file. It observed that the trial court had examined and given reasoned answers to all the allegations presented by Chikunov and his lawyer. The Court concluded that Chikunov's acts had been correctly qualified in law. It upheld the first instance court judgment, thus confirming the author's son's death sentence.

2.11 On 4 July 2000, the author complained to the Supreme Court under the supervisory procedure. On 21 July 2000, she was informed that the court had examined her complaint and the criminal case file again, and found no grounds to quash the previous decisions.

2.12 The author also claims that her son was executed unlawfully, on 10 July 2000, because the law applicable prohibits execution prior to the receipt of a reply to a request for pardon filed by the condemned prisoner. In the present case, at the time of execution, neither she nor her son had been informed of the outcome of the request for a pardon sent to the Presidential administration

[5] The judgment contains the following paragraph in relation to the alleged torture: "The expert of the Ministry of Internal Affairs Makhmatov explained to the court that when he recorded on video tape the interrogation of Chikunov in the evening of 17 April 1999, the beginning of the interrogation was recorded properly". However, "when Chikunov was confessing his guilt in the double murder, the video camera, which was obsolete and often blocked, stopped". Makhmatov also contends that during his stay in the office on 17 April (at night time) and during the day of 18 April 1999, no one had beaten the author's son, and the latter confessed his guilt voluntarily. The court also examined the issue of the clothes with blood marks: "Confirming the version of her son, the mother of Chikunov has brought in court a shirt with blood marks and trousers, allegedly belonging to her son, and affirmed that her son was beaten to force him confess guilt in the murder. First, it is unclear whether these clothes belong to Chikunov, and when were they stained, secondly, from the testimonies of Chikunov, Ilin, the investigation officials of the Criminal Search Department, it appears that Chikunov and Ilin had a fight in the corridor, when Chikunov tried to testify that Ilin was equally present at the crime scene during the murder. The fact that the fight took place was confirmed both by Chikunov and Ilin, during a confrontation. The court also interrogated witnesses who took part in the seizure of the crime weapon; they all affirmed that Chikunov designated the place where the pistol was hidden and gave details of the circumstances of the crime under no coercion.

on 26 January, 9 February, 26 May, and 30 June 2000. The author's son also submitted a pardon request to the Supreme Court on 6 March 2000.

The complaint

3. The author claims that her son is a victim of violations by Uzbekistan of his rights under article 6; article 7; article 9; article 10; article 14; and article 16.

State party's observations

4.1 The State party presented its observations on 1 July 2005. It recalls that on 11 November 1999, the Tashkent Regional Court found Chikunov guilty under articles 168 (4) (a) (fraud in a particularly important amount), 228 (2) (b) (elaboration of forged documents, stamps, seals, forms, their sale or deliberate use of false documents), 248 (3) (elaboration of forged documents, stamps, seals, forms, their sale or use), 164 (4) (a) (robbery in a particularly important amount), and 97 (2) (a), (i), (premeditated murder with aggravating circumstances of two or more individuals, for self-interested aims) of the Criminal Code. For the totality of these acts, he was sentenced to death. This decision was upheld by the Supreme Court on 24 January 2000.

4.2 According to the State party, in the evening of 16 April 1999, the author's son drove, together with his business partners, to a place outside Tashkent. At some point, the business partners threatened Chikunov that they would ask some well known local individual to "sort out his case". Chikunov asked them to stop the car, stepped out and threw a grenade inside, with the intention to kill them. The grenade did not explode. Chikunov climbed back into the car, the business partners continued to threaten him, and continued their journey. Chikunov, from the back of the car, shot his business partners in the head. He then escaped from the crime scene, and returned to Tashkent where he hid the crime weapon.

4.3 The State party contends that Chikunov's guilt in the murders was established on the basis of various testimonies, the conclusions of forensic examinations, including the examination of the bullets extracted from the bodies of the victims and the car's interior, and the confirmation that they originated from Chikunov's pistol. A psychiatrist also concluded that Chikunov was mentally responsible.

4.4 The State party notes that Chikunov's allegations about the use of unlawful methods of investigation after his arrest were examined and refuted during the trial itself. Thus, the court interrogated the officials of the Ministry of Internal Affairs. All of them testified that during the investigation, including during the verification of his deposition at the crime scene, the author's son voluntarily and without any coercion explained the circumstances of the murders and revealed the hiding place of the crime weapon.

4.5 According to the State party, Chikunov's guilt in the crimes was established on the ground of the multitude of collected objective evidence which was compiled over time in the case. His punishment was determined in view of the gravity of the acts committed and in the absence of extenuating circumstances.

Author's comments

5.1 In comments dated 13 April 2006, the author points out that although the presiding trial judge read out the conclusions of an expert according to which the grenade thrown into the car was not a military one and no attempts for its modification were made, this was not taken into account in the determination of her son's punishment.

5.2 The author claims that the court failed in its duty of objectivity. Notwithstanding that her son was accused of having fired several shots with a firearm, no examination was ever carried out to verify whether any gunpowder remained on his hands. Also, there were a number of blood marks in the back seat and on the carpet of the car in which the crime was committed. If her son was the murderer, according to the author, he should have splattered blood on his face, hair, and hands; however, no examination was ever conducted in this regard. The cover of the back seat of the car was also not examined, when its examination could have confirmed the exact position of the murderer[6].

5.3 Mrs. Chikunova recalls her affirmation that her son's clothes did not disclose "any visible" marks of blood when they were seized and sealed by the police, in the presence of witnesses. It was only two weeks later, during a examination in the presence of several different witnesses, that an expert discovered a very small mark and small splashes of coagulated blood. The blood group corresponded to that of one of the business partners. The author claims that no DNA test was ever made in this respect.

5.4 The author recalls that when she complained about her son's torture, she was only referred to the investigator against whom she actually complained. Finally, the author reiterates her allegations about the violation of her son's right to a proper defence.

Issues and proceedings before the Committee

Consideration of the admissibility

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, as required by article 5, paragraph 2 (a), of the Optional Protocol, and notes that it is also uncontested that domestic remedies have been exhausted.

[6] According to the author, her son's lawyer asked the investigator Grigoryan in court to explain why the cover was not examined by an expert, and received the reply that it was "all impregnated of blood and was all in worms" when the evidence was sent for examination two weeks after the seizure. The author claims that the investigation had destroyed important evidence on purpose. The court refers to this evidence with the following formulation: "when examining the cover of the back side, it was discovered that…". According to the author, this constitutes a falsification of evidence and a "free interpretation of the conclusions of the forensic medical expert".

6.3 The Committee notes the author's allegation that her son is a victim of a violation of articles 9 and 16, but observes that these allegations have not in any way been substantiated. This part of the communication is inadmissible as insufficiently substantiated under article 2 of the Optional Protocol.

6.4 The Committee has noted the author's challenge to the manner in which the judges and investigators handled her son's case. It observes, however, that these allegations relate primarily to the evaluation of facts and evidence by the courts. 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 the evaluation was clearly arbitrary or amounted to a denial of justice[7]. In the absence of other pertinent information that would show that the evaluation of evidence indeed suffered from such deficiencies in the present case, as well as in the absence of a copy of any trial transcripts, the Committee considers this part of the communication to be inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that the author's remaining allegations that appear to raise issues under article 6; article 7; article 10; and article 14, paragraph 3 (b), (d) and (g), have been sufficiently substantiated, for purposes of admissibility, and declares them admissible.

Consideration of the merits

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

7.2 The author claims that her son confessed guilt under torture. During the preliminary investigation, she complained to the authorities about this, but all her complaints were to no avail. When her son retracted his confessions at the court as obtained under duress, the judge interrogated several witnesses and investigators who denied any use of coercion against him. The State party has only contended that the courts examined these allegations and found them to be groundless. The Committee recalls that once a complaint against maltreatment contrary to article 7 is filed, a State party must investigate it promptly and impartially[8]. In the present case, the author has presented documents with a detailed description of the torture allegedly suffered by her son. The Committee considers that the documents before it indicate that the State party's authorities did not react adequately or in a timely way to the complaints filed on behalf of the author's son. No information has been provided by the State party to confirm that a further inquiry or medical examination was conducted in order to verify the veracity of Mr. Chikunov's torture allegations. In the circumstances of the case, the Committee concludes that the facts as presented disclose a violation of article 7, read together with article 14, paragraph 3 (g), of the Covenant.

7.3 In light of the above conclusion, the Committee does not consider it necessary to examine the author's claim under article 10.

[7] See, inter alia, Communication No 541/1993, Errol Simms v. Jamaica, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.
[8] General Comment on article 7, No. 20 [44], adopted on 3 April 1992, paragraph 14.

7.4 The author has claimed that contrary to the requirements of national law, her son was only provided with a lawyer on 19 April 1999, i.e. two days after his arrest. He could meet with this lawyer only once, and in the presence of investigators. While the author's son had a privately hired lawyer since 17 June 1999, that lawyer was only allowed to act after 13 August 1999, once the preliminary investigation had ended. The State party has not presented comments on these allegations. In the circumstances, due weight must be given to the author's allegations. The Committee recalls[9] its jurisprudence that particularly in cases involving capital punishment, it is axiomatic that the accused is effectively assisted by a lawyer at all stages of the proceedings. In the circumstances of the present case, the Committee concludes that the author's son's rights under article 14, paragraph 3 (b) and (d), were violated.

7.5 The Committee recalls[10] its jurisprudence that the imposition of a sentence of death 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. In this case, the sentence of death was passed in violation of the fair trial guarantees set out in article 14, paragraph 3 (b), (d) and (g), of the Covenant, and thus also in breach of article 6, paragraph 2.

7.6 The author has also claimed that her son's execution was carried out unlawfully, because under Uzbek law no death sentence can be executed prior to the examination of the condemned person's request for a pardon. In this case, several pardon requests were filed with the presidential administration, and no reply was received. The State party has not commented on this allegation. In the circumstances, due weight must be given to the author's allegations. Accordingly, the Committee considers that the material before it disclose a violation of article 6, paragraph 4, of the Covenant.

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 article 6, paragraph 4; article 7; and article 14, paragraph 3 (b), (d) and (g), read together with article 6, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mrs. Chikunova with an effective remedy, including 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.

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[9] See for example Aliev v Ukraine, Communication 781/1997, Views adopted on 7 August 2003, paragraph 7.2.

[10] See Conroy Levy v. Jamaica, communication No. 719/1996, and Clarence Marshall v. Jamaica, communication No. 730/1996.

[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.]
