



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninetieth session
9-27 July 2007

VIEWS

Communication No. 1140/2002

<u>Submitted by:</u>	Mrs. Matlyuba Khudayberganova (not represented by counsel)
<u>Alleged victims:</u>	Iskandar Khudayberganov (the author's son)
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	28 November 2002 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 29 November 2002 (not issued in document form)
<u>Date of adoption of Views:</u>	24 July 2007

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of death sentence after unfair trial with resort to torture during preliminary investigation.

Substantive issue: Torture; unfair trial; right to life.

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

Articles of the Covenant: 2; 3; 5; 6; 7; 10; 11; 14; 16

Article of the Optional Protocol: 2

On 24 July 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.1140/2002.

[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. 1140/2002**

Submitted by: Mrs. Matlyuba Khudayberganova (not
represented by counsel)

Alleged victims: Iskandar Khudayberganov (the author's son)

State party: Uzbekistan

Date of communication: 28 November 2002 (initial submission)

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

Meeting on 24 July 2007,

Having concluded its consideration of communication No. 1140/2002, submitted to the
Human Rights Committee on behalf of Mr. Iskandar Khudayberganov, 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 Matlyuba Khudayberganova, an Uzbek national. She submits the
communication on behalf of her son, Iskandar Khudayberganov, also an Uzbek, born in 1974,
awaiting execution in Tashkent following a death sentence imposed by the Tashkent City Court
on 28 November 2002. The author claims that her son is a victim of violations by Uzbekistan of
his rights under article 2; article 3; article 5; article 6; article 7; article 10; article 11; article 14;
and article 16 of the Covenant. She is unrepresented.

** The following members of the Committee participated in the examination of the present
communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Yuji
Iwasawa, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Ms. Zonke Zanele Majodina, Ms. Iulia
Antoanella Motoc, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas
Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

1.2 On 29 November 2002, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party not to carry out Mr. Khudayberganov's death sentence while his case was under consideration. On 11 December 2003, the State party replied that the Supreme Court had deferred the execution, pending the Committee's final decision.

Factual background

2.1 In 16 February 1999, several explosions took place in Tashkent. Many people were killed and several others were injured. A number of individuals were suspected of having participated in the preparation of the bombings, including the author's son, and a criminal case was opened against him.

2.2 On 28 November 2002, Iskandar Khudayberganov was sentenced to death for the setting up of (and his participation in) an organised criminal association and participation in an organised armed group; incitement to national, racial or religious hatred; robbery; premeditated murder under aggravating circumstances carried out in a manner that put the life of others at risk; terrorism, and other crimes.

2.3 The author affirms that her son's punishment was particularly severe. His conviction did not correspond to his personality, and he had been positively assessed by his neighbours. An affidavit to this effect was presented in court. He is married and has two children. In 1996 and 1997, he worked as TV assistant cameraman.

2.4 Khudayberganov was initially arrested in Tajikistan, on 24 August 2001, allegedly as an "Uzbek spy". He was interrogated and tortured in the Tajik Ministry of Internal Affairs facilities. On 5 February 2002, he was transferred to Uzbekistan and arrested there. He was kept in the basement of the Ministry of Internal Affairs in Tashkent, where he was severely beaten and tortured by investigators and forced to confess guilt. The author submits a copy of an undated letter by her son, in which he describes the tortures suffered. Allegedly, he was beaten with batons, and he was prevented from sleeping, and not given any food "for weeks". He received kicks in the groin area as well on the head. He was hit with a tube, and started hearing noise in his head. All this was done in the absence of a lawyer¹. He was beaten by several male individuals aged 30-35 years. He resisted until the moment when he was threatened that his relatives would be brought there and his mother, sister, and wife would lose "their dignity" in front of him. On 11 February 2002, he was placed in the Investigation Detention Centre of the National Security Service, NSS, and was officially charged under articles 242, 155, 158, 159, and 161 of the Uzbek Criminal Code (organisation of a criminal association and establishment of an armed group, ensuring its leadership or participating in it; terrorism; attempt on the life of the President; Conspiring to seize power and to overthrow the Constitutional order; diversion/subversive activity).

¹ The case file contains also a copy of a letter addressed on 22 November 2002 to several institutions, including the Tashkent City Prosecutor's Office, in which the Chief of the "Initiative Group of the independent human rights defenders" affirms that both NGOs, diplomats and journalists were convinced that the accused were subjected to torture during the investigation, in the absence of a lawyer.

2.5 The author was informed about her son's detention on 18 March 2002, when a lawyer informed her that she was representing her son. All complaints in relation to her son's ill-treatment, addressed to different institutions (the General Prosecutor's Office, to the Presidential administration, and to the Constitutional Court), remained unanswered, and were simply transmitted to the instances she was complaining against. According to Supreme Court decision of 20 November 1996, evidence obtained by unlawful methods is inadmissible. Her son's confessions, however, served as a basis for his conviction. The conviction was also based on the testimonies of one Akhmedov who was mentally ill, and one Abdusamatov, whose testimony was wrong, a fact that the court was informed about.

2.6 At the beginning of the trial, Khudayberganov retracted his confessions. The court concluded that this was a defence strategy.

2.7 Allegedly no accusation against the author's son was confirmed in court, and only indirect evidence was used against him. The author's son's terrorism charges were similarly groundless. No information as to the moment of time, location, or nature of any terrorist acts committed by Khudayberganov was presented during the investigation or in court.

2.8 The author considers her son's charges for the organisation of a criminal association unfounded. As to the charges that her son participated in two robberies, the author claims that in court, no victim identified him as having participated in the crimes. The accusation against her son of having participated in the murder of two police officers after the second robbery on 6 August 1999 is also unfounded, because at that moment he was abroad.

2.9 The investigators had seized several kilograms of ammonium nitrate and aluminium powder at one Karimov's home (where Khudayberganov had spent several months in hiding), and concluded that these substances served for the fabrication of explosives. The author claims that this conclusion is unfounded.

2.10 The author claims that her son's rights to be presumed innocent and to benefit from all remaining doubts were violated. Both the investigation and the court proceedings were allegedly conducted in an accusatory manner.

The complaint

3. The author claims violations of her son's rights under article 2; article 3; article 5; article 6; article 7; article 10; article 11; article 14; and article 16, of the Covenant.

State party's observations

4.1 On 23 December 2003, the State party affirmed that according to information of the Uzbek General Prosecutor's Office, Khudayberganov was arrested in Tajikistan on 31 January 2001 and was transferred to Uzbekistan on 5 February 2002, where he was detained. According to the evidence, he joined the extremist religious organisation "Islamic Movement of Uzbekistan" (IMU) in 1998 and underwent military training in Chechnya. After his return in 1998, he established the Tashkent IMU branch together with other individuals, with the aim to establish an Islamic State. To finance their activities, the group committed several murders and armed robberies.

4.2 On 16 February 1999, a number of bombs exploded in Tashkent. On 4 March 1999, the author's son, together with other members of the group, robbed the house of a businessman in Tashkent, and took possession of a large sum of money and of a car. On 6 August 1999, they attacked another entrepreneur, who died as a result of his injuries; two policemen were also killed following this episode. In August 1999, the alleged victim went to a military camp in Tajikistan.

4.3 In June 2000, he underwent special training in explosives in a IMU camp in Tajikistan. In July 2000, he arrived in Tashkent with the order to bomb the Railway Station or another important object. The bombing did not take place, because of the arrest, by the authorities, of his accomplices who were trying to bring detonators and cables from Tajikistan.

4.4 According to the prosecution's evidence, Khudayberganov's and his co-defendants' guilt was established partly by their confessions, as well as by the results of the verification of the accuracy of their claims at the crime scenes, the testimony of several witnesses, and information from the co-defendants' confrontation with the victims, and finally by forensic and ballistic evidence.

Further submissions by the author

5.1 The author provided further information in 2003. She notes that the State party provides no information about the conduct of any investigation with respect to her son's torture allegations, and observes that her son still displays a scar on his head as a result of a blow with a metal tube. When he was transferred to the NSS's detention centre, he was tortured, had psychotropic substances administered, and was threatened that his relatives would be raped in front of him. He complained in court about this and gave the names of those responsible, but the court rejected his allegations.

5.2 The author recalls that her son claimed to be innocent in court because he was abroad when the murders were committed, and no evidence confirmed his participation in the crimes. Her son proved his innocence in court. He did not follow any training in Chechnya in 1998 but studied in Tashkent. He denied being a IMU member. On 16 February 1999, during the bombings, he was at the home of his mother in law. After the bombings, the authorities made several arrests and on 21 February 1999, he escaped to Tajikistan. Several witnesses already detained for different crimes and who had incriminated the author's son, in court retracted their testimonies as false and given under coercion.

5.3 According to the author, the chemical substances found at Karimov's house were seized in the absence of any witnesses. It was not confirmed that her son owned any firearm, and no arms or cartridges were found during the searches. Her son's accusation and conviction on this count was purely conjectural.

5.4 The author claims that she was informed about her son's detention only 41 days after his arrest, although under Uzbek Criminal Code, the authorities must inform relatives of the arrested individual within 24 hours.

5.5 The author reiterates that the court was not impartial. When the torture claim was made in court, the judge replied that the accused had to repeat their confession from the preliminary

investigation and should “not play drama”. The judge simply ignored the declarations. The prosecutor was not present on several occasions, and during his absence, the prosecutor’s functions allegedly were assumed by the judge.

5.6 Finally, the author claims that her son was beaten on death row, and that he was brought, on several occasions, to a special room, where he was attached to a chair and his head was shaved.

5.7 On 10 March 2005, the author presented further comments, reiterating her earlier comments.

State party’s further observations

6.1 On 25 May 2004, the State party reiterated its earlier observations. It recalls that on 28 November 2002, he was sentenced to death by the Tashkent City Court. The court convicted him because, after having joined the IMU in February 1998, together with other individuals, he followed training in military camps in Chechnya and Tajikistan. After his return to Uzbekistan, he committed several crimes, including murders and robberies. On 28 January 2003, the Appeal Body of the Tashkent City Court confirmed the death sentence.

6.2 On 29 June 2005, the State party presented new observations. In relation to the torture allegations, in particular on the absence of an investigation, it asserts that neither officials of the Ministry of Internal Affairs nor those of the NSS used torture or any other unlawful investigation methods against the author’s son. The author’s torture allegations are said to be an attempt to mislead the Committee and to create a negative image of the State party’s law enforcement authorities.

6.3 The State party affirms that Khudayberganov was represented by a lawyer from the moment of the first interrogation. The case file reveals that he produced his confessions freely. The trial materials and transcripts contain no record about his affirmations on torture, beatings, or use of violence against him. The torture allegations are groundless and this is also confirmed by the fact that they were never brought to the law enforcement authorities.

6.4 The State party contends that according to the case file, Khudayberganov confessed that he took part in the IMU’s activities and visited terrorist training camps in Chechnya and Tajikistan. He returned in Tashkent in 1998 to recruit people for the camps. The State party reiterates the chronology of the events and affirms categorically that Khudayberganov’s guilt was established beyond doubt in accordance with the applicable criminal law proceedings. The court proceedings fully observed the Criminal Procedure Code then into force, and the trial took place in the presence of two prosecutors, and of the author’s son’s two lawyers.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 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 takes note that it remains uncontested that domestic remedies have been exhausted.

7.3 The Committee notes, first, the author's claim that her son's rights under article 3, article 5, article 11, and article 16, have been violated. These allegations have not been substantiated by any other pertinent information, and are therefore inadmissible under article 2 of the Optional Protocol.

7.4 The Committee observes that the author's allegations that raise issues under article 14 tend to show that her son's trial did not meet the criteria of fairness, that the court was neither impartial nor objective, and that the presiding judge assumed the functions of the prosecutor during the latter's absence. The State party has refuted these allegations, in general terms by affirming that the trial was conducted in conformity with the law and procedures then into force, and in particular by contending that the trial was always held in the lawyers' and prosecutors' presence. In the absence of any other pertinent information, the Committee concludes that this part of the communication is inadmissible as insufficiently substantiated under article 2, of the Optional Protocol.

7.5 The Committee considers that the remaining part of the author's allegations under article 2; article 6; article 7; article 10; and article 14 are sufficiently substantiated, for purposes of admissibility, and declares them admissible.

Consideration of the merits

8.1 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.

8.2 The author claims that her son was beaten and tortured by investigators, and thus forced to confess his guilt. He retracted his initial confessions in court, claiming that they had been obtained under duress and identifying the names of those responsible for his ill-treatment. The State party has rejected the claim as a defence strategy, and has asserted that no torture or unlawful methods of investigation were used against Khudayberganov, and that the entire investigation and all court proceedings complied with the law in force. The author has also claimed that her son was ill-treated on death row, which was not contested by the State party. The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially². It notes that the case file contains copies of complaints about the author's son's ill-treatment that were brought to the attention of the State party's authorities, including copies of letters from the alleged victim's sister, from lawyers, from NGOs', as well as a letter from Khudayberganov himself, which detailed the methods of torture used against him. The Committee considers that in the circumstances of the case, the State party has failed to demonstrate that its authorities adequately addressed the torture allegations advanced by the author, both in the context of domestic criminal proceedings and the present communication. Accordingly, due weight must be given to her allegations. In the circumstances, the Committee concludes that the facts as presented disclose a

² General Comment on article 7, No. 20 [44], adopted on 3 April 1992, paragraph 14.

violation of the author's son's rights under article 7, read together with article 14, paragraph 3 (g), of the Covenant.

8.3 In light of the above conclusion in relation to article 7 of the Covenant, the Committee does not find it necessary to examine separately the author's claim under article 10, of the Covenant.

8.4 The Committee recalls that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have been violated constitutes a violation of article 6 of the Covenant. In the present case, the alleged victim's death sentence was imposed on the victim in violation of article 7, and article 14, paragraph 3 (g), of the Covenant. Accordingly, the Committee concludes that the alleged victim's rights under article 6, paragraph 2, of the Covenant, have also been violated.

9. 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 Mr Khudayberganov's rights under article 6, paragraph 2; and article 7 and article 14, paragraph 3 (g), of the Covenant, the last two read together.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr Khudayberganov with an effective remedy, including commutation of the death sentence and compensation. The State party is also under an obligation to prevent similar violations in the future.

11. 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.]
