



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/95/D/1200/2003
22 April 2009

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Ninety-fifth session
16 March – 3 April 2009

VIEWS

Communication No. 1200/2003

<u>Submitted by:</u>	Mrs. Gulrakat Sattorova (not represented by counsel)
<u>Alleged victim:</u>	Mr. Zarif Sattorov (the author's son)
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	18 August 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 18 August 2003 (not issued in document form).
<u>Date of adoption of Views:</u>	30 March 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of death sentence after unfair trial.

Substantive issue: Torture; forced confession; unfair trial; bias of trial court.

Procedural issues: n.a.

Articles of the Covenant: 6; 7; 9; 10; 14, paragraphs 1 and 3 (g)

Article of the Optional Protocol: n.a.

On 30 March 2009 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.1200/2003.

[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

Ninety-fifth session

concerning

Communication No. 1200/2003**

<u>Submitted by:</u>	Mrs. Gulrakat Sattorova (not represented by counsel)
<u>Alleged victims:</u>	Mr. Zarif Sattorov (the author's son)
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	18 August 2003 (initial submission)

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

Meeting on 30 March 2009,

Having concluded its consideration of communication No. 1200/2003, submitted to the
Human Rights Committee on behalf of Mr. Zarif Sattorov 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 Ms. Gulrakat Sattorova, a Tajik national born in 1950. She submits the communication on behalf of her son, Zarif Sattorov, also a Tajik national born in 1977, who, at the time of the submission of the communication, was detained on death row following imposition of a death sentence by the Supreme Court of Tajikistan, on 21 November 2002. The author claims that her son is the victim of a violation, by Tajikistan, of his rights under

** The following members of the Committee participated in the examination of the present communication: Mr. Prafullachandra Natwarlal Bhagwati, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

article 6; article 7; article 9, paragraphs 1 and 2; article 10; and article 14, paragraphs 1 and 3 (g), of the International Covenant on Civil and Political Rights. The author is unrepresented¹.

1.2 When registering the communication on 18 August 2003, and pursuant to rule 92 of its Rules of Procedures, the Human Rights Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party not to carry out Mr. Sattorov's death sentence, pending consideration of his case.

The facts as presented by the author:

2.1 The author claims that her son was suspected of having participated, since 1997, in an armed gang of one Saidmukhtor Erov, and having taken part in several crimes, including robberies and murders. She contends that Erov asked young people to join his gang; those who tried to refuse risked being killed. Her son was one of those who were forced to join the gang, in the spring of 1998. According to the author, her son was mentally retarded and had great difficulty in reading or writing. For that reason, he was a gang member for 25 days only.

2.2 The author contends that her son did not participate in any criminal activity. He was accused of having committed robberies in February and May 1997, in June 1997, and to have participated in a hostage taking in May 1998. According to her, he was not involved in these crimes, as he was not a member of the gang when the crimes were committed.

2.3 The author's son was arrested at 5 a.m. on 11 March 2002, when fifteen armed policemen entered the family apartment and forcibly took him to an unknown destination. They showed neither their police ID's nor an arrest warrant. Mr. Sattorov's parents spent two days to locate their son in the Ministry of Internal Affairs' Department of the Zheleznodorozhny District, Dushanbe. Only after a further two days, Mr. Sattorov's father was allowed to see him. Mr. Sattorov was kept at the Internal Affairs' Department for twenty-one days. He was then transferred to a Temporary Detention Centre; from there, he was transferred to a Pre-trial Detention Centre.

2.4 The author contends that her son was detained without any record, to put him under pressure and force him to confess guilt in crimes that he did not commit. During his time in the Zheleznodorozhny District Department of the Ministry of Internal Affairs, i.e. immediately after his arrest, and throughout the preliminary investigation, he was allegedly beaten, tortured, and coerced to confess his guilt in respect of several crimes. In substantiation of her claim, the author explains that her son was beaten with sticks, batons, that he was punched and kicked, was hit with the butt of an automatic rifle, and he was administered electric shocks. His head and his spine were damaged as a result. He was also forced to sign confessions previously drafted by the police, as well as blank forms. The author reiterates that her son could read only with difficulty; thus, he ignored what he was in fact signing. In addition, he signed most of his confessions in the absence of a lawyer. Mr. Sattorov allegedly explained this to relatives during their visits (during the preliminary investigation). He claimed that he often lost conscience because of the torture he had suffered, during the interrogations in the first few days following his arrest. At the time, his body still revealed marks of torture.

¹ The Optional Protocol entered into force for the State party on 4 April 1999.

2.5 The author adds that her son was formally charged only one month after his arrest. After the arrest, the author's son was not represented by a lawyer and was not informed of his rights. Only one month later, the investigators assigned a lawyer to him, who, according to the author, acted in the best interest of the prosecution. The lawyer did not inform the family of any developments in the criminal case. He also allegedly signed records on several procedural acts that were conducted by the investigators in his absence. He was allegedly aware that his client was subjected to beatings but did not take any steps to prevent this treatment.

2.6 The author adds that numerous procedural acts were carried out not only in the lawyer's absence, but also in the absence of any witnesses, i.e. contrary to the requirements of the Criminal Procedure Code of Tajikistan. The evidence so collected by the investigators should have been considered inadmissible.

2.7 According to the author, during the preliminary investigation, her son was examined by a psychiatrist who concluded that he was of sound mind. The author reiterates that her son was mentally retarded, as he was unable to communicate properly and to expose his thoughts clearly. Therefore, he should have passed a more detailed psychological and psychiatric examination, with hospitalisation in a specialised institution, but the investigators had no interest in ordering such hospitalisation.

2.8 Mr. Sattorov's case was examined by the Criminal College of the Supreme Court of Tajikistan on 21 November 2002. According to the author, the court was biased, as the presiding judge simply endorsed the position of the prosecution. The judge often shouted at the accused (and at his relatives), contending that he was a liar and that he had told the truth during the preliminary investigation. The requests of the lawyer of the author's son were constantly rejected. For example, the court refused to call several witnesses who, according to the author, could have confirmed her son's non involvement in the crimes he was accused of. The conviction was based exclusively on the forced confessions of the author's son.

2.9 The author adds that in court, no witness could testify to her son's involvement in any crime, or describe in any way his role within the gang of Erov. There were seventy witnesses in the criminal case, but the court called only sixteen. The author claims that the case file contained no direct evidence of her son's guilt.

2.10 The author's son has explained to the court that he was tortured to confess guilt. The court ignored this claim. In addition, the court did not order a medical-forensic examination of her son to verify his torture claims, in spite that his lawyer has asked him to remove his shirt and to show his marks of torture visible at his dorsal spine, and despite that he specifically requested the court to order an examination of his client in this connection.

2.11 On 21 November 2002, the Supreme Court found Mr. Sattorov guilty of all charges and sentenced him to the death. The author's appeal was examined by the appeal instance of the Supreme Court on 28 January 2003, which confirmed the sentence.

The complaint

3.1 The author claims that her son's rights under article 7 of the Covenant were violated, as he was beaten and tortured by investigators. As he was forced to confess his guilt under torture and psychological pressure, his rights under article 14, paragraph 3 (g), were also violated.

3.2 The author claims that her son's rights under article 9, paragraphs 1 and 2, were violated, as he was detained unlawfully, he was not informed of the charges against him for a long period of time and was only charged one month after arrest.

3.3 The author claims that her son's rights under article 14, paragraph 1, were violated, as the court failed in its duty of impartiality, was biased and partial in its assessment of evidence, and in particular because the court did not interrogate a number of witnesses.

3.4 Finally, the author claims that given that her son was sentenced to death after a trial that was contrary to the requirements of article 14, his rights under article 6, paragraphs 1 and 2, of the Covenant, were also violated.

State party's observations

4.1 The State party presented its observations on 4 May 2004. It submits detailed factual information obtained from the Supreme Court and the General Prosecutor's Office of Tajikistan, in connection to several crimes, including armed robberies, beatings, murders, and hostage-takings that were committed between February 1997 and August 1999, by the gang with the participation of Mr. Sattorov.

4.2 The State party contends that Mr. Sattorov was arrested on 12 March 2002, and was placed in pre-trial detention on 13 March 2002. He was assigned a lawyer, Mr. Safarov, on 13 March 2002. The same day, in the presence of his lawyer, the author's son was informed of the charges against him. Mr. Sattorov counter-signed the order placing him in custody. According to the State party, all subsequent investigative acts were conducted in the lawyer's presence.

4.3 The State party contends that there is no information that the alleged victim was subjected to any form of unlawful methods of investigation. Neither during the preliminary investigation nor before the court, did the author's son or his lawyer formulate any claim about beatings, torture, or other form of unlawful methods of investigation.

4.4 At the beginning of the preliminary investigation, Mr. Sattorov admitted his membership in the gang of Erov. He admitted that he participated in the commission of several crimes by the gang. During the verification of his deposition at crime scenes, he reconfirmed his confessions in the presence of his lawyer and other witnesses. In addition, he confessed his guilt in crimes that were not known to the investigation at that time.

4.5 The State party contends that, according to the information from the Supreme Court, the allegations that the author's son was subjected to torture and to prohibited methods of investigation are absolutely groundless and are not corroborated by evidence, and were not confirmed during the trial in the Supreme Court. The case was examined on appeal by the appeal

body of the Supreme Court, on 28 January 2003, and Mr. Sattorov's sentence was confirmed. On the basis of the above, there is no evidence of any violations of the Covenant.

Author's comments on the State party's observations

5.1 On 6 June 2004, the author commented on the State party's observations. She reiterates her previous allegations and adds that her son's assigned lawyer met with his client only on 17 March 2002. The same day, the lawyer requested Mr. Sattorov's father to pay him for services. The father paid the amount, but when he was calling him, the lawyer was allegedly asking for more money, affirming that he would stop representing Mr. Sattorov. According to the author, the lawyer was not present during a number of important investigation acts.

5.2 The author objects to the State party's contention that her son or his lawyer never complained about torture during the preliminary investigation. She explains that her son could not formulate such complaints through his lawyer, as the later was assigned by the investigator, and was only present towards the end of the investigation, in order to sign records and other investigative acts.

5.3 The author reiterates that her son has indeed claimed that he was tortured, and provided details: he was tortured with electric shocks on his nose, his toes. He was handcuffed to a radiator, and beaten with a rubber baton on his spine. He was also beaten on his kidneys with a wet towel. During the court trial, the family hired a new lawyer to represent him. The author reiterates that her son claimed in court that he was tortured. She adds that the new lawyer asked the court to call the officers who conducted the investigation and allegedly tortured his client, as the accused could have recognised them, but the court rejected the request. She recalls that during the court trial, in the presence of other lawyers and co-accused, the new lawyer requested the accused to raise his shirt and to show to the judges the marks of torture on his dorsal spine. The lawyer asked the court to order a medical-forensic examination, without success.

5.4 The author provides a copy of the appeal filed by her son's lawyer after his conviction. The lawyer also filed two applications for a supervisory review to the Supreme Court Chairman and to the Supreme Court's Presidium, but his claims were rejected.

5.5 The author adds, on 21 October 2004, that her son was still at Investigation Detention Centre No.1 in Dushanbe, notwithstanding the fact that there had been a Moratorium on the execution of death sentences in Tajikistan in the meantime, and that many of those sentenced to death were transferred to other detention facilities.

Additional information from the State party

6. On 9 March 2006, the State party informed that on 15 July 2004, Mr. Sattorov's death sentence was commuted, by decision of the Supreme Court, to 25 years' prison term.

Issues and proceedings before the Committee

Consideration of the 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, as required by article 5, paragraph 2 (a) and (b), of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement, and that it is uncontested that domestic remedies have been exhausted.

7.3 The Committee notes the author's claims under article 9, according to which her son was kept unlawfully for four weeks on premises of the Ministry of Internal Affairs and that he was charged formally only later. The State party has refuted these allegations and has provided the exact sequence of the author son's arrest and placement in custody (see paragraph 4.2 above). In the absence of any further information, in particular on the eventual steps taken by the alleged victim, his representatives, or his family, to bring these issues to the attention of the competent authorities during the investigation and the trial, the Committee considers that this part of the communication is inadmissible as insufficiently substantiated, under article 2 of the Optional Protocol.

7.4 The Committee notes that the author claims that her son was tortured and forced to confess his guilt, and that the court ignored this and refused the claims to call and interrogate the investigators in his case and to order his medical examination. The State party has rejected these claims, by affirming in general terms that no torture was used against the author's son, but without providing further explanations on the matter. In the circumstances, and given that the copy of Mr. Sattorov's appeal contains direct references to alleged forced confessions and torture, the Committee considers that due weight must be given to the author's allegations. Therefore, it considers that the remaining allegations of the author, in as much as they appear to raise issues under articles 6; 7; 10; and 14, paragraphs 1 and 3 (g), of the Covenant, have been sufficiently substantiated, and therefore 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 has claimed that her son was beaten and tortured by investigators and was thus forced to confess guilt in a number of crimes. She provides a detailed description of the methods of torture used. She contends that in court, her son retracted his confessions made during the preliminary investigation and explained that they had been obtained under torture, but his claims were ignored. He showed marks of alleged torture to the court. His lawyer also asked, without success, to have him examined by a forensic expert to confirm these claims. The author contends that her son's and his lawyer's claims and requests in this respect were simply ignored, and that his initial confessions served as the basis for his conviction.

8.3 The author has provided copies of her son's sentence and his appeal. The Committee notes that the sentence refers to the fact that the author's son retracted his confessions in court, as obtained under coercion. This issue remained however unanswered by the court. The Committee further notes that in his appeal to the appeal instance of the Supreme Court, the author's son's lawyer referred to the fact that his client's confessions were obtained through torture and that in court, Mr. Sattorov had also confirmed this. The lawyer also claimed in the appeal that his request for a medical examination of his client was also ignored by the trial court. The Committee notes that the State party has simply replied, without providing further explanations, that the author's son was not tortured, and that, in addition, neither he nor his lawyer ever complained about torture or ill-treatment.

8.4 The Committee recalls that once a complaint against ill-treatment contrary to article 7 is filed, a State party is duty bound to investigate it promptly and impartially². In this case, the State party has not specifically, by way of presenting the detailed consideration by the courts, or otherwise, refuted the author's allegations nor has it presented any particular information, in the context of the present communication, to demonstrate that it conducted any inquiry in this respect. In these circumstances, due weight must be given to the author's allegations, and the Committee considers that the facts as presented by the author disclose a violation of her son's rights under article 7 and article 14, paragraph 3 (g), of the Covenant.

8.5 In light of the above finding, the Committee does not find it necessary to address separately the author's claim under article 10 of the Covenant.

8.6 The author also claims that the trial of her son did not meet the basic requirements for a fair trial, in violation of 14, paragraph 1, because of the manner her son was treated when he retracted his confessions during the trial, and because of the court's failure to adequately address his torture allegations, and because the court did not call a number of witnesses. The Committee has noted that State party did not specifically address these issues in its submission. At the same time, the Committee notes however that the case file does not contain any pertinent information in this respect, in particular trial transcripts or other records, which would allow it to shed light on the allegation and allow it to ascertain whether Mr. Sattorov's trial indeed suffered from such fundamental defects. In these particular circumstances, the Committee considers that it cannot conclude to a violation of the alleged victim's rights under article 14, paragraph 1.

8.7 Finally, with respect to the author's claim under article 6, the Committee notes that in the present case, the alleged victim's death sentence was commuted to long term imprisonment on 15 July 2004. The Committee considers that in these circumstances, the issue of the violation of Mr. Sattorov's right to life has thus become moot.

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

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Sattorov with an effective remedy, including the payment of adequate

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

compensation, initiation and pursuit of criminal proceedings to establish responsibility for the author son's ill-treatment, and a retrial, with the guarantees enshrined in the Covenant or release, of the author's son. 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 180 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.]
