UNITED NATIONS

CCPR

International covenant on civil and political rights

Distr.
RESTRICTED*

CCPR/C/85/D/1042/2001
16 November 2005

Original: ENGLISH

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

VIEWS

Communication No. 1042/2001

Submitted by:	Abdukarim Boimurodov (not represented by counsel)
Alleged victim:	Mustafakul Boimurodov (author's son)
State Party:	Tajikistan
Date of communication:	26 December 2001 (initial submission)
Document references:	Special Rapporteur's rule 92 decision, transmitted to the Sate party on 26 December 2001 (not issued in document form)
Date of adoption of Views:	20 October 2005

* Made public by decision of the Human Rights Committee.

Subject matter: Death sentence after unfair trial, torture

Substantive issues: Degree of substantiation of claims, adequacy of State party response

Procedural issues: None

Articles of the Covenant: 6, 7, 9(1), (2), 14(1), 3(a),(b),(d) and (g)

Articles of the Optional Protocol: 2

On 20 October 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. 1042/2001. 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. 1042/2001[**]

Submitted by:	Abdukarim Boimurodov (not represented by counsel)
Alleged victim:	Mustafakul Boimurodov (author's son)
State Party:	Tajikistan[1]
Date of communication:	24 September 2001 (initial submission)

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

Meeting on 20 October 2005,

Having concluded its consideration of communication No. 1042/2001, submitted to the Human Rights Committee on behalf of Mustafakul Boimurodov 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 Abdulkarim Boimurodov, a Tajik citizen born in 1955. He submits the communication on behalf of his son, Mustafakul Boimurodov, also a Tajik citizen, born in 1976, currently imprisoned in Dushanbe, Tajikistan. He claims that his son is a victim of violations by Tajikistan of articles 6; 7; 9 paragraphs 1 and 2; and 14 paragraphs 1,

[**] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, 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 and Mr. Roman Wieruszewski.

[1] The Covenant and the Optional Protocol entered into force in relation to Tajikistan on 4 April 1999.

3(a),(b),(d) and (g), of the International Covenant on Civil and Political Rights. The communication also appears to raise issues under article 9, paragraph 3. He is not represented by counsel.

Factual background

2.1 On the evening of 10 October 2000, policemen came to the author's apartment, where he lived with his son, and without presenting any search or arrest warrant, searched the premises and arrested his son. From 10 October until 1 November 2000, the author's son was detained at a temporary detention centre, and was then moved to an investigation detention centre. For a total of 40 days he was held incommunicado; during this period none of his relatives knew where he was, and he had no access to a lawyer.

2.2 From the first day of his arrest, the author's son was allegedly tortured by policemen from various departments, in order to force him to confess to charges of terrorism. The torture consisted of beatings with a truncheon, a pistol handle, and a metal pipe on all parts of the body. Several toenails were pulled out with pliers. His son sought medical assistance on 1 and 8 November 2000, and 2 April 2001; the medical history file states that he had sustained cranial trauma, but other injuries sustained as a result of the torture are not recorded, such as the fact that he was missing nails on several toes. Several officers were subsequently charged in relation to their mistreatment of the author's son, but none were prosecuted, and all those involved continue to work as policemen.

2.3 Unable to withstand the torture, the author's son confessed to the charges against him, which related to his alleged involvement in 10 incidents of terrorism, which involved the following offences: participation in terrorist acts, murder, attempted murder, and unlawful possession and preparation of explosives. It transpires that charges were pressed only in relation to three incidents of terrorism: these related to an explosion at a Korean missionary centre on 1 October 2000, as a result of which 9 people died; an explosion at the home of the ex-wife of the author's son on 10 October 2000, which severely injured her and killed another person; and an explosion at a shop. The author notes that the fact his son confessed to charges relating to all 10 incidents, even those in respect of which charges were not prosecuted at trial, indicates that his confession was forced.

2.4 At his son's trial in the Supreme Court in March 2001, the presiding judge was allegedly biased in favour of the prosecution, interrupting the testimony of the accused and his witnesses when they did not say what the authorities wanted them to say. Initially, the judge did not want certain defence witnesses to testify; only on the insistence of his son's lawyer was their testimony heard. In relation to the bombing of the Korean missionary centre, these witnesses gave evidence confirming the alibi of the author's son for the time of the explosion. However, the presiding judge discarded these witnesses' evidence, on the basis that they were neighbours and relatives of the accused; the judge instead relied on testimony of prosecution witnesses who said they had seen the author's son at the scene of the crime. One prosecution witness who said he was unsure whether he had seen the author at the scene was subsequently 'threatened' by the judge; this witness later changed his testimony and confirmed that he had indeed seen the author's son at the missionary centre at the time in question. Regarding the bombing of the apartment of the author's former daughter-in-law, the author claims that the court did not properly investigate alternative versions of the bombing.

2.5 The court relied on prosecution evidence regarding an explosive substance discovered in the author's apartment, which was identified by the authorities as 73.5 grams of ammonal. However, as the author explained to the judge, he himself had bought the substance, thinking it was sulphur. He further states that, because there are no experts in explosives in Tajikistan, he doubts whether the substance was formally analysed at all.

2.6 During the trial, his son retracted his confession, told the judge it was given under torture, and even named those who abused him. He also complained that the search of the apartment had been conducted illegally, and that he had not had any access to family or a lawyer for 40 days. On 13 July 2001, despite these arguments, his son was found guilty of involvement in all three terrorist acts and sentenced to death. On 12 October 2001, his appeal to the appellate instance of the Supreme Court was partially upheld; his conviction on charges relating to the bombing of the shop was set aside for lack of evidence. However, his conviction for the other two terrorist attacks was confirmed, as was the death sentence.

2.7 The author requested the Committee to intervene to prevent his son's execution. On 26 December 2001, the Committee, acting through its Special Rapporteur, requested the State party not to carry out the execution of the author's son pending the Committee's consideration of the communication. Although the State party did not respond to this request, it transpired from a subsequent submission by the author (1 September 2002) that by decision of the Presidium of the Supreme Court of 20 June 2002, his son's death sentence was commuted to 25 years of imprisonment.

The complaint

3. The author claims that his son's arrest, trial and ill-treatment whilst in custody gives rise to violations of articles 6, 7, 9, paragraphs 1 and 2, and 14 paragraphs 1, 3(a),(b),(d) and (g) of the Covenant.

The state party's observations on admissibility and merits

4.1 By note of 5 March 2002, the State party submitted that the author's son, a student at the Islamic University, was arrested and charged in connection with a series of bomb blasts in Dushanbe. Specifically, he was charged with conspiring and attempting to kill his ex-wife in a bomb blast, caused by a device installed in a cassette player. The blast severely injured the woman and killed another person. On 11 October 2000, explosives and detonators were found in the apartment where the author's son lived. In the course of the investigation, he confessed to having prepared the explosive device, together with two accomplices. He was tried in the Supreme Court and found guilty of terrorist acts, murder, attempted murder, and unlawful possession and preparation of explosives, and was sentenced to death. However, as a result of an appeal, his sentence was changed.

4.2 The State party notes that the General Procurator had opened an investigation in the course of which the participation of Mr Boimurodov in the explosions would again be reviewed.

Author's comments on the State party's submissions

5.1 In his comments on the State party's submission dated 1 September 2002, the author clarifies that on 12 October 2001, his son's conviction was altered on appeal by the Supreme

Court only in relation to his alleged involvement in the bombing of the shop; in this regard his conviction was overturned. However, his conviction in relation to the other two bombings, and the sentence of death, stood.

5.2 The author states that on 20 June 2002, the Presidium of the Supreme Court decided to overturn his son's conviction in relation to the bombing at the Korean missionary centre, and to refer the matter back for further investigation. It transpires that the General Procurator filed a protest with the Court, in light of another person's confession to involvement in that bombing. The conviction in relation to the bombing at the ex-wife's apartment was confirmed but the death sentence against his son was commuted to 25 years imprisonment.

5.3 The author contends that the allegations about his son's torture and unfair trial have not been answered by the State party, and that his son has still not been provided with an effective remedy in relation to the violations of the Covenant of which he was a victim.

5.4 On 16 January 2004, the author states that the further investigation ordered by the Presidium of the Supreme Court on 20 June 2002 had still not been completed, which, according to the author, constitutes a violation of his son's right to a fair trial without undue delay.[2]

Issues and proceedings before the Committee

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 case is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes that, in view of the commutation of Mr Boimurodov's death sentence in 2002, there is no longer any factual basis for the claim under article 6 of the Covenant. Accordingly, this claim has not been substantiated, and is therefore inadmissible pursuant to article 2 of the Optional Protocol.

6.4 In relation to the author's claims under articles 9, paragraphs 1 and 2, and 14, paragraph 3(a), the Committee notes that the author has not alleged that his son was not informed of the charges against him upon arrest, but that no arrest warrant was presented. Further, there is no information before the Committee about how, when, or if at all the arrest of the author's son was sanctioned by the relevant authorities. In the absence of such information, the Committee considers that the author has failed sufficiently to substantiate these claims, and accordingly declares them inadmissible under article 2 of the Optional Protocol. However, the Committee considers that the facts before it also appear to raise issues under article 9, paragraph 3 of the Covenant; in that respect, the Committee considers the Communication to be admissible.

6.5 In relation to the author's claims under article 14, paragraph 1, the Committee notes that the author challenges the Court's assessment of the testimony of defence and prosecution

[2] Given the stage this issue was raised by the author, the Committee decides not to deal with this claim.

witnesses, as well as the analysis of material discovered in the author's apartment. The Committee recalls its jurisprudence 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.[3] On the information before it, the Committee considers that the author has failed sufficiently to substantiate that his son's trial in the present case suffered from such defects. Accordingly, this claim is inadmissible under article 2 of the Optional Protocol.

6.6 In relation to the author's claim under article 14, paragraph 3(d), no information has been provided in substantiation of the claim that the author's son was in fact denied the right to legal assistance in the preparation of his defence at trial. Accordingly, this claim is also inadmissible under article 2 of the Optional Protocol.

6.7 The Committee considers there to be no impediment to the admissibility of the author's remaining claims under articles 7, 9, paragraph (3), and 14, paragraphs (3)(b) and (3)(g), and proceeds to consider them on the merits.

Consideration of the merits

7.1 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 under article 5, paragraph 1, of the Optional Protocol. It notes that, whilst the State party has provided comments on the author's son's criminal case and conviction, including information about the commutation of the death sentence, it has not provided any information about the substance of the claims advanced by the author. The State party merely notes that Mr Boimurodov was tried and convicted for certain offences; it does not address the author's substantive allegations of Covenant violations.

7.2 In relation to the author's claims that his son's rights under articles 7 and 14, paragraph (3)(g) were violated by the State party, the Committee notes that the author has made detailed submissions which the State party has not addressed. The Committee recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol that a State party should examine in good faith all allegations brought against it, and should provide the Committee with all relevant information at its disposal. The Committee does not consider that a general statement about the criminal proceedings in question meets this obligation. In such circumstances, due weight must be given to the author's allegations, to the extent that they have been properly substantiated. In light of the detailed information provided by the author to the effect that his son was subjected to severe pain and suffering at the hands of the State party's law enforcement officers, some of whom were subsequently charged in relation to this mistreatment, and in the absence of an explanation from the State party, the Committee considers that the case before it discloses a violation of articles 7 and 14, paragraph 3(g) of the Covenant.

7.3 Similarly, the Committee must give due weight to the author's allegation of a violation of his son's right under article 14(3)(b) to communicate with counsel of his choosing. In the absence of any explanation from the State party, the Committee considers that the facts as

[3] See Communication No.541/1993, Errol Simms v. Jamaica, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

presented to it regarding the author's son being held incommunicado for a period of 40 days reveal a violation of this provision of the Covenant.

7.4 Further, the Committee recalls that the right to be brought 'promptly' before a judicial authority implies that delays must not exceed a few days, and that incommunicado detention as such may violate article 9, paragraph 3.[4] In the present case, the author's son was detained incommunicado for 40 days. In the absence of any explanation from the State party, the Committee considers that the circumstances disclose a violation of article 9, paragraph 3.

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 violations of articles 7, 9, paragraph (3), and 14, paragraphs (3)(b) and (g) of the Covenant.

9. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee considers that the author's son is entitled to an appropriate remedy, including adequate compensation.

10. By becoming a State 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; pursuant to article 2 of the Covenant, the State party has undertaken to ensure 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 cases where 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.

[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.]

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[4] Communication No 277/1988, *Teran Jijon v Ecuador*, Views adopted on 26 March 1992, at para 5.3; Communication No 1128/2002, *Rafael Marques de Morais v Angola*, Views adopted on 29 March 2005, para 6.3.