



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-sixth session
13 – 31 March 2006

VIEWS

Communication No. 1044/2002

<u>Submitted by:</u>	Davlatbibi Shukurova (not represented by counsel)
<u>Alleged victims:</u>	The author's husband Dovud and his brother Sherali Nazriev (deceased)
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	26 December 2001 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 9 January 2002 (not issued in document form)
<u>Date of adoption of Views:</u>	17 March 2006

* Made public by decision of the Human Rights Committee.

Subject matter: Torture, unfair trial, unlawful detention.

Substantive issues: Death sentence pronounced and executed after unfair trial.

Procedural issues: Level of substantiation of claim.

Articles of the Covenant: 2, paragraph 3; 6; 7; 9; 14 paragraphs 1, 3 (b), (d), (e), (f), (g), and (5).

Article of the Optional Protocol: 2

On 17 March 2006, 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. 1044/2002. 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-sixth session

concerning

Communication No. 1044/2002*

Submitted by: Davlatbibi Shukurova (not represented by
counsel)

Alleged victims: The author's husband Dovud and his brother
Sherali Nazriev, deceased

State party: Tajikistan

Date of communication: 26 December 2001(initial submission)

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

Meeting on 17 March 2006,

Having concluded its consideration of communication No. 1044/2002, submitted to
the Human Rights Committee by Davlatbibi Shukurova 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:

* The following members of the Committee participated in the examination of the present
communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, 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, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

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

1.1 The author of the communication is Davlatbibi Shukurova, a Tajik national born in 1973. She submits the communication on behalf of her husband, Dovud Nazriev, and on behalf of his brother, Sherali Nazriev, both deceased, who, at the time of submission of the communication, were awaiting execution following a death sentence pronounced by the Supreme Court on 11 May 2000. She claims that the brothers are victims of violation by Tajikistan, of their rights under articles 6; 7; 9; and 14, paragraphs 1, 3 (b), (d), (e), (f), (g), and 5, of the Covenant¹. The communication also appears to raise issues under article 7 in relation to the author herself. She is not represented.

1.2 On 9 January 2002, pursuant to rule 92 (old 86) of its rules of procedure, the Human Rights Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party not to carry out the execution of the brothers while their case is being examined by the Committee. This request was reiterated on 1, 9, and 10 July 2002. On 23 July 2002, the author informed that her husband and his brother were executed on 11 July 2002.

Factual background

2.1 On 16 February 2000, at around 5 p.m. a remote-controlled bomb exploded in the centre of Dushanbe. The target of the explosion was the Mayor of Dushanbe. The Mayor was injured, while the Deputy-Minister of Security, who was standing next to him, was killed.

2.2 Sherali Nazriev was interrogated in relation to the bombing on 19 February 2000 as a suspect. He was arrested immediately after the interrogation, and on 25 February 2000, he was charged with the bombing. On 25 April 2000, the author's husband, Dovud, was called for interrogation to the Ministry of Security; he was arrested the same day. He was allegedly detained in the basement of the Ministry of Security until 28 May 2000, when he was transferred to an Investigation Detention Centre (SIZO). His arrest was allegedly authorized by a prosecutor only on 29 May 2000, and he was charged with the bombing the same day.

2.3 The brothers were allegedly tortured to force them to confess guilt during the month following their arrests. The author contends that the acts of torture included beatings and kicks with batons. The brothers were hung up and were administered kicks to their kidneys. Under torture, they confessed in writing to having committed the bombing. Sherali, as a security guard in the Mayor's Office, was accused of placing the explosive in the Mayor's car, and Dovud, who was allegedly standing nearby, activated the bomb when the Mayor and the deputy Minister went to the car. Allegedly, shortly after their confessions, the investigators began placing cords, soap, and razor blades in their cells, to incite them to commit suicide.

2.4 The author claims that the brothers' relatives were given no information about their whereabouts for several months, and they were not allowed to visit them or to send parcels to them. Allegedly, she saw her husband only in July 2000, during a confrontation in the investigator's office; she was allowed to meet "officially" with him only in September 2000.

¹ The Covenant and the Optional Protocol entered into force for the State party on 4 April 1999.² The trial was held before the Military Chamber of the Court, as Sherali Nazriev was a military officer.

2.5 Allegedly, while detained in the premises of the Ministry of Security, Dovud was not allowed to be represented by a lawyer. As Sherali was not provided with a State-appointed lawyer, his family hired a private lawyer in March 2000, but he was allowed to see him only in August 2000; even then, the lawyer was allegedly prevented from meeting with his client in private.

2.6 The case was heard by the Military Chamber of the Supreme Court² (sitting in first instance), from 26 March to 11 May 2001. On 11 May 2001, the Military Chamber of the Supreme Court sentenced the brothers to death. According to the author, the trial was biased and not objective. In particular:

(a) One of the judges was not an ethnic Tajik and allegedly could not speak Tajik properly; but he was not provided with an interpreter.

(b) In court, the brothers retracted their confessions, objecting that they had been signed under duress. According to the author, Sherali had no possibility to place the bomb in the car, because it was parked in front of the entrance to the Mayor's Office, and many people were passing there, while on the day of the crime Dovud was sick and stayed at home.

(c) Most of the brothers' requests to call defence witnesses, including an alibi witness for Dovud, were rejected by the court.

(d) Sherali's guilt was partly based on the conclusions of an expert who had examined his clothes. The author notes that the arrest was on 19 February 2000, but that the clothes were only examined in August 2000.

2.7 On 13 November 2001, the Criminal Chamber of the Supreme Court, acting as an appellate body, upheld the judgment of the Military Chamber of 11 May 2000.

The complaint

3. The author claims that the facts set out above amount to a violation of the rights of Sherali and Dovud Nazriev under articles 6; 7; 9; and 14, paragraphs 1, 3 (b), (d), (e), (f), (g), and 5 of the Covenant. Although the author does not specifically invoke article 7 in her own respect, the communication also appears to raise issues under this provision.

State party's observations on admissibility and merits

4.1 The State party presented comments on 9 July 2002, without however addressing the Committee's request for interim measures for protection. It states that the brothers were sentenced to death for a serious terrorist act. To achieve their plan and objectives, they acted on a preliminary agreement with an unidentified person. Sherali joined the police and became a security guard in the Municipality of Dushanbe. On 16 February 2000, during lunch break, he placed a bomb in the Mayor's car and informed his brother. Dovud observed the car and when the Mayor came in, accompanied by the deputy Minister of Internal Affairs, detonated the bomb.

4.2 The court found the brothers guilty of other crimes as well, e.g. fraud committed in 1999 (illegal transfer of property of a car). Sherali was sentenced for unlawfully crossing of the Tajik-Afghan border in 1995, Dovud for dissemination of 4000 counterfeit US dollars and for participation in a robbery in 1999.

4.3 According to the State party, the brothers' guilt was fully established on the basis of their confessions, on the basis of witness testimony in court and depositions during the preliminary investigation, as well as on the basis of records of the examination of the crime scene, evidence seized, conclusions of forensic experts, and other evidence examined by the court.

4.4 The State party recalls that an arrest warrant against Dovud was issued on 24 May 2000. He was served the order on 29 May 2000; the same day he refused, in writing, to avail himself of the services of a lawyer. Subsequently, before being charged with particularly serious crimes, he was given an ex-officio lawyer. Sherali was arrested on 17 February 2000. During his interrogation, he was informed of his right to be represented by a lawyer but did not request one. Notwithstanding, a lawyer was assigned to him on 19 March 2000. According to the State party, the case file does not contain any record indicating that any of the above lawyers has ever complained about a refusal to meet with their clients.

4.5 The State party rejects as unfounded the author's allegations of the use of torture during preliminary investigation, arguing that the criminal case file does not contain any complaints about any beatings.

4.6 The author's allegations about the bias and partiality of the trial are rejected as groundless by the State party, because the trial was public and took place in the presence of lawyers, relatives of the accused and other individuals.

4.7 The allegation about the insufficient knowledge of Tajik by one of the court's judges is also dismissed, as the person in question adequately mastered the language. In addition, the lawyers for the Nazriev brothers did not object in court about this.

4.8 As to the alibi defence presented by Dovud, the State party notes that this was verified and dismissed during the preliminary investigation. In court, neither Dovud nor his lawyer produced documents that would buttress his alibi defence.

4.9 The State party affirms that the Military Chamber of the Supreme Court had initially sent back the case for "additional investigation", and that subsequently it decided to re-open the proceedings, and interrogated additional witnesses, listened to the pleadings of the prosecution and the lawyers. The judgment was pronounced in accordance with the requirements of the Criminal Procedure Code then into force.

4.10 The State party affirms that the author's allegations were all examined and dismissed on cassation.

Author's comments

5.1 On 1 September 2002, the author explained that upon registration of the case by the Committee, the State party's authorities (Presidential Office) requested the Ministry of Interior, the Prosecutor's Office, and the Supreme Court to postpone the execution of the brothers for a period of 6 months, until 10 July 2002. On 24 June 2002, the prison authorities refused to accept her parcels in SIZO No 1 Detention Centre in Dushanbe, affirming that the brothers had been transferred to the city of Kurgan-Tyube. The author tried to locate them, but the authorities did not reply to her queries, claiming that they had no relevant information. On 23 July 2002, a relative of her husband obtained two death certificates from the Dushanbe Municipality, establishing that the brothers had been executed by firing squad already on 11 July 2002.

5.2 The author recalls that Sherali's arrest in February 2000 for illegal border crossing was a cover-up designed to extract information on the bombing from him in the absence of a lawyer. She refers to article 51 of the Criminal Procedure Code, which states that where a suspect faces the death penalty, legal representation is compulsory from the moment of the indictment.

5.3 The author notes that the State party has not provided any explanation about the grounds of her husband's detention from 25 April to 24 May 2000, and adds that her husband's detention during this period could be confirmed by family members, friends, and relatives, who saw him leaving for his interrogation in the Ministry of Security and never coming back.

5.4 According to her, the brothers' lawyers had requested repeatedly to see their clients, but their requests were mostly rejected under different pretexts. The practice in Tajikistan is that a lawyer will orally request an investigator to allow him to meet his/her client; when the request is rejected, no ground is given. Such refusals are said to constitute a common practice. The author affirms that during the trial, her husband's and his brother's lawyers both complained about the limited access to their clients. The presiding judge apparently ignored these claims.

5.5 The author reaffirms that her husband and his brother were subjected to multiple acts of torture, and that their relatives were not allowed to visit them for a long period to presumably prevent them seeing the marks of torture; in court, the brothers had claimed that they were tortured, but this was ignored.

5.6 Finally, the author affirms that the court concluded that the brothers had entered into a "preliminary agreement with an unidentified person" who allegedly paid them 30 000 US dollars prior to the attack, and promised to pay an additional 100 000 US dollars upon completion. She argues that the family had always lived with limited financial means, and that neither the investigation nor the court found any money. She contends that the fact that the person who masterminded the crime was not identified during the investigation nor by the court shows that crucial elements and evidence of the case have not been established. This, according to the author, illustrates the bias and partiality both of the preliminary investigation, and the court.

Issues and proceedings before the Committee

Breach of the Optional Protocol

6.1 The author affirms that the State party has breached its obligations under the Optional Protocol by executing her husband and his brother despite the fact that their communication had been registered under the Optional Protocol and a request for interim measures of protection had been addressed to the State party in this respect. The Committee recalls³ that by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and article 1). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith, so as to enable it to consider such communications, and after examination to forward its Views to the State party and to the individual (article 5, paragraphs 1 and 4). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.

6.2 Apart from any violation of the Covenant found against a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or to frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In the present communication, the author alleges that her husband was denied rights under articles 6, 7, 9, 10 and 14 of the Covenant. Having been notified of the communication, the State party breached its obligations under the Protocol by executing the alleged victims before the Committee concluded consideration and examination of the case, and the formulation and communication of its Views. It is particularly inexcusable for the State to have done so after the Committee acted under rule 92 of its Rules of Procedure, and in spite of several reminders addressed to the State party to this effect.

6.3 The Committee recalls that interim measures pursuant to rule 92 of the Committee's Rules of Procedure adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Protocol. Flouting of the Rule, especially by irreversible measures such as, as in the present case, the execution of Dovud and Sherali Nazriev, undermines the protection of Covenant rights through the Optional Protocol⁴.

Examination of admissibility

³ See *Piandiong v. the Philippines*, Communication No. 869/1999, Views adopted on 19 October 2000, paragraphs 5.1 to 5.4.

⁴ See, *Saidov v. Uzbekistan*, Communication No. 964/2001, Views adopted on 8 July 2004.⁵ See Communication No. 541/1993, *Errol Simms v. Jamaica*, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2. ⁶ See General comment No. 20 (on article 7), forty-fourth session (1992), para. 14.

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, in line with the requirements of article 5, paragraph 2 (a), of the Optional Protocol.

7.3 The Committee has noted the author's claim under article 14, paragraph 3 (e), that several witnesses for Dovud Nazriev were not examined in court. The State party has contended that this allegation was duly examined during the preliminary investigation and was found to be groundless, and that the court dismissed Dovud's defence alibi as neither he nor his lawyer had provided any documents that would corroborate this alibi. The Committee notes that the above claim relates to the evaluation of facts and evidence. It 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 it was clearly arbitrary or amounted to a denial of justice⁵. On the information before it, the Committee considers that the author has failed to substantiate sufficiently that her husband and his brother's trial in the case suffered from such defects. Accordingly, this claim is inadmissible under article 2 of the Optional Protocol.

7.4 The Committee takes note of the author's allegation under article 14, paragraph 3 (f), as one judge did not sufficiently master the Tajik language. The State party has explained that the judge in question did adequately master the language, and that neither the alleged victims nor their lawyers ever raised the issue in court; this affirmation is unchallenged by the author. In the circumstances, the Committee considers that the author did not exhaust available domestic remedies, and this part of the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

7.5 The Committee has also noted the un-refuted claim that Dovud and Sherali Nazriev's rights under article 14, paragraph 5, of the Covenant were violated. It recalls that appeal on cassation was examined on 13 November 2001 by the Criminal Chamber of the Supreme Court, acting as an appellate body of the Military Chamber, and that the composition of the appellate body was different from the initial composition of the Military Chamber. In the absence of other information in this respect, the Committee considers that the author has failed to substantiate sufficiently this claim, for purposes of admissibility. This part of the communication is thus inadmissible under article 2 of the Optional Protocol.

7.6 The Committee considers that the author's remaining claims are sufficiently substantiated, for purposes of admissibility.

Examination of the merits

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

8.2 The author claims that her husband and his brother were beaten and subjected to torture by investigators during the early stages of their detention, thus forcing them to confess guilt

in the bombing; she provides details on the methods of torture used (paras 2.3 and 2.4 above). She contends that these allegations were raised in court but were ignored. The State party merely argues that the case file does not contain complaints about mistreatment. The Committee observes that the decision of the Supreme Court's Appellate Chamber also does not address the issue. In the absence of other pertinent information in this regard, due weight must be given to the author's claims. The Committee recalls that it is essential that complaints about torture must be investigated promptly and impartially by competent authorities⁶. In the present case, no substantive refutation was made by the State party in this regard, and the Committee concludes that the treatment Dovud and Sherali Nazriev were subjected to amounts to a violation of article 7, read together with articles 14, paragraph 1 and 2, paragraph 3, of the Covenant.

8.3 In light of the above, the Committee concludes that Dovud and Sherali Nazriev's right under article 14, paragraph 3 (g), was also violated, as they were compelled to confess guilt to a crime.

8.4 The author contends that her husband was arrested on 25 April 2000 and kept in premises of the Ministry of Security until 28 May, without contact with the outside world; his arrest was endorsed by a prosecutor only on 29 May 2000, i.e. 34 days after arrest. The State party notes that an arrest warrant against Dovud was issued on 25 May 2000 and that he was indicted on 29 May 2000. In its reply, the State party has in fact not refuted the claim of unlawful detention of Dovud Nazriev for 34 days. In the circumstances of the case, the Committee concludes that Dovud Nazriev's right under article 9, paragraph 1, was violated.

8.5 On the claim that Dovud and Sherali Nazriev were unrepresented for a long period, and that once they were legally represented, their lawyers were prevented from meeting with them, the State party affirms that when Dovud was indicted on 29 May 2000, he waived his right to be represented; when he was charged with serious crimes, he was given an ex-officio lawyer; Sherali did not request to be represented upon arrest, but was assigned a lawyer on 19 March 2000, when charged with serious crimes. The Committee recalls that, particularly in cases involving capital punishment, it is axiomatic that the accused is effectively assisted by a lawyer⁷ at all stages of the proceedings. It concludes that in the circumstances of the present case, the material before it reveals a violation of the author's husband's and his brother's rights under article 14, paragraph 3 (b), and (d), of the Covenant, in that they were not provided with the opportunity adequately to prepare their defence, and were not legally represented at the initial stage of the investigation.

8.6 The Committee recalls 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 Covenant⁸. In the current case, the death sentences were passed and

⁷ See, for example, *Aliev v. Ukraine*, Communication No. 781/1997, Views adopted on 7 August 2003, paragraph 7.3.

⁸ See, for example, *Kurbanov v. Tajikistan*, Communication No. 1096/2002, Views adopted on 6 November 2003, paragraph 7.7.⁹ See, for example, *Aliboev v. Tajikistan*, Communication No. 985/2001, Views adopted on 18 October 2005, paragraph 6.7.

executed, in violation of the right to a fair trial, as guaranteed by article 14 of the Covenant, and therefore also in violation of article 6 of the Covenant.

8.7 The Committee finally notes the author's claim that the authorities did not inform her about her husband's and his brother's execution until 23 July 2002. The law in force in the State party still does not allow for the family of an individual under sentence of death to be informed either of the date of execution or the location of the burial site of the executed individual. The Committee understands the continued anguish and mental stress caused to the author, as the wife of a condemned prisoner, by the persisting uncertainty of the circumstances that led to his execution, as well as the location of his gravesite. It recalls that the secrecy surrounding the date of execution, and the place of burial, as well as the refusal to hand over the body for burial, have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities' failure to notify the author of the execution of her husband and of her brother in law, and the failure to inform her of their burial places, amounts to inhuman treatment of the author, contrary to article 7⁹.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the Covenant, is of the view that the facts before it disclose a violation

(a) of articles 6; 7; 9, paragraph 1; and 14, paragraphs 1 and 3 (b), (d), and (g) , of the Covenant in relation to Dovud and Serali Nazriev, and

(b) of article 7 in relation to the author herself.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mrs. Shukurova with an effective remedy, including appropriate compensation, and to disclose to her the burial site of her husband and her husband's brother. 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.]
