



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/95/D/1233/2003
28 April 2009

Original: ENGLISH

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

VIEWS

Communication No. 1233/2003

<u>Submitted by:</u>	A. K. and A. R. (represented by counsel, Mrs. Salima Kadyrova and Mr. Kamil Ashurov)
<u>Alleged victims:</u>	The authors
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	9 July 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 2 December 2003 (not issued in document form)
<u>Date of adoption of Views:</u>	31 March 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Conviction for seeking, receiving and imparting information and ideas related to Islam

Substantive issues: Right to freedom of expression, right to impart information and ideas, restrictions necessary for the protection of national security, restrictions necessary for the protection of public order

Procedural issues: Lack of substantiation of claims

Articles of the Covenant: 7, 9, 10, 14, 15 and 19

Article of the Optional Protocol: 2

On 31 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. 1233/2003.

[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. 1233/2003**

Submitted by: A. K. and A. R. (represented by counsel, Mrs. Salima Kadyrova and Mr. Kamil Ashurov)

Alleged victims: The authors

State party: Uzbekistan

Date of communication: 9 July 2003 (initial submission)

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

Meeting on 31 March 2009,

Having concluded its consideration of communication No. 1233/2003, submitted to the Human Rights Committee on behalf of A. K. and A. R. 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 authors of the communication and the State party,

Adopts the following:

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

1. The authors of the communication are A. K. and A. R., Uzbek citizens born in 1974 and 1968, respectively, who at the time of submission of the communication were detained in Uzbekistan. They claim to be victims of violations by Uzbekistan of their rights under articles 7,

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, 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. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

9, 10, 14, 15 and 19 of the International Covenant on Civil and Political Rights.¹ The Optional Protocol entered into force for the State party on 28 December 1995. The authors are represented by counsel, Mrs. Salima Kadyrova and Mr. Kamil Ashurov.

Factual background

2.1 Terrorist bombings took place in Tashkent, the capital of Uzbekistan, on 16 February 1999. The Government blamed them on the Islamic Movement of Uzbekistan led by Mr. Tokhir Yuldashev and Mr. Zhumaboi Khodzhiev and on the international Sunni pan-Islamist political party known as Hizb ut-Tahrir (Party of Liberation). Some members and alleged members of the organizations were arrested and tried in connection with these events.

2.2 On 25 February 1999, the head of the investigations unit of the Samarkand Regional Prosecutor's Office requested an expert examination of exhibits relating to criminal cases involving various persons including Mr. Mamatov, who was mentioned by the Samarkand Regional Criminal Court, the court of first instance. To this end, all the books, magazines and leaflets written in the Arabic and Cyrillic scripts that had been found during searches of the homes of the detained persons and other citizens were submitted for expert examination by a group of specialists from Samarkand State University, in order to determine whether they were "harmful" or "harmless", whether the acts in question constituted an offence and whether this written material was compatible with the Constitution.

2.3 A. K. was arrested on 12 March 1999 and A. R. on 15 March 1999 after the authorities discovered numerous publications and written materials on religious themes in A. K.'s brother's attic. The authors submit they were prosecuted simply for reading and studying religious texts, particularly the Koran, and meeting with others who had similar interests and views. They reject the charge that they intended to incite hatred or overthrow the constitutional order, and deny that they belonged to any illegal religious or social organization. They point to passages in the Samarkand Regional Court's judgement which refer to them as studying prohibited texts and organizing illegal groups, and claim that such wording is standard - in other words that it is the same as that employed in other judgements delivered in cases involving religious activities, with only the names of the accused, the titles of the works, and the details of meetings being changed to fit the context. They refer to such passages as the common thread in judgements delivered in cases concerning religious activities.

2.4 On 6 May 1999 the group of experts replied to the request from the Regional Prosecutor's Office. It took the view that the books, magazines, leaflets and all the other prohibited literature sold by the accused and used for teaching their students called for anti-constitutional activities to change the established order in Uzbekistan, as well as ideas which ran counter to Uzbek law. They openly called for the establishment of an Islamic State based on the ideology of religious fundamentalism and religious laws through ideological struggle. These documents advocated recourse to violence as part of the "Jihoz". The publications kept and disseminated by the defendants set forth ideas of religious extremism and fundamentalism, and hence fell into the category of materials that threaten public order and security in our country. For example, they

¹ The authors do not invoke article 18 of the Covenant in their communication.

contained the idea that “the entire Islamic world must become a single community; all Muslims must be as one body and one spirit, regardless of their ethnic group, nationality or race. Beyond obstacles and artificial borders, all States must join together in a single ‘Islamic State’”. These writings called upon citizens to strive with devotion for the creation of such a State and even to sacrifice their lives if necessary, that is to achieve the status of *shahid* (martyr). Such notions are, in the view of the experts, typical of religious fundamentalism and extremism.

2.5 On 6 August 1999, the Samarkand Regional Criminal Court convicted the authors of several offences under article 156, part 2 (e) of the Uzbek Criminal Code (Incitement of Ethnic, Racial or Religious Hatred), as well as article 159, part 4 (Attempts to Constitutional Order of Republic of Uzbekistan), article 216 (Illegal Establishment of Public Associations or Religious Organizations), article 242, part 1 (Organization of Criminal Community) and article 244-1, part 3 (a) and (c) (Production and Dissemination of Materials Containing Threat to Public Security and Public Order). Each of the authors was sentenced to 16 years’ imprisonment.

2.6 In its judgement of 6 August 1999 concerning the authors, the Samarkand Regional Court refers to the conclusion of the group of experts of 6 May 1999 that Hizb ut-Tahrir is a religious and political association whose goal is to wage political war. The main aims of Hizb ut-Tahrir were to impregnate citizens’ minds with Islamic instruction, acquaint them with Islamic ideology through ideological struggle and establish an “Islamic State”. One way of doing so was through “Jihoz”, that is, eliminating any obstacles to Islam. This required all Muslim countries to unite under the “banner of the Caliphate” and use wide-scale “Jihoz” to spread Islam throughout the world. If, in contrast to citizens living in accordance with the principles of the “Islamic State”, rulers do not conduct public affairs in accordance with those principles, citizens have a duty to combat them with the sword.

2.7 The Samarkand Regional Court’s judgement states that the authors entered into a criminal conspiracy with the Hizb ut-Tahrir group organized in the Samarkand region in 1997-1998. With an eye to the group’s interests, in breach of the Constitution, they openly called for the destruction of the constitutional order and territorial integrity of the Republic of Uzbekistan, the seizure of power and the overthrow of the current order, and they strove to inflame the population by disseminating material to that end. With financial assistance from religious organizations, they committed crimes such as forming cells of a criminal association in order to recruit citizens for criminal activities. The group of conspirators produced material calling for citizens to be forcibly resettled as a means of fomenting discord, enmity and intolerance towards population groups on the basis of their religion or of their national, racial or ethnic background. Together with the other members of Hizb ut-Tahrir, the authors directed over 10 *naqib* and ran more than 174 *khalaka* (cells) to which they recruited more than 520 young people as *dorises*. The cells studied forbidden literature such as the “Precepts of Islam”, “Onward towards Honour and Glory”, the tenets of Hizb ut-Tahrir, “The End of the Caliphate”, other books and leaflets calling for civil disobedience, and “*Al-Waie*”, a newspaper devoted to the basic ideals of the party.

2.8 According to the Samarkand Regional Court’s judgement, A. R. said during the trial that, since childhood, he had been interested in religion and had prayed assiduously. He had first become acquainted with the ideas of Hizb ut-Tahrir’s in December 1997 and had studied the activities of the organization between December 1997 and October 1998. He acknowledged that

he had resolved to become a Hizb ut-Tahrir member, organized 6 study groups and taught a total of 22 individuals using the books of Hizb ut-Tahrir. A. K. confirmed that he started to take lessons based on the book “The Precepts of Islam” in February 1997 and had joined Hizb ut-Tahrir in December of the same year. He was in charge of distributing Hizb ut-Tahrir literature and had taught “The Precepts of Islam” in a study group in January and February 1999. During the trial, A. K. repented of his activities, adding that he had not conspired to organize explosions or resettle populations and had had no intention of undermining the Constitution of Uzbekistan. During the trial, the authors stated that their aims had been to acquire a deeper knowledge of Islam and to call on their countrymen to be honest, behave properly and abstain from alcohol. They had not opposed State policy and had not advocated the establishment of a caliphate. The court interpreted these arguments as an attempt to avoid punishment for their “serious offences”. The court concluded that the literature the authors had distributed and taught was contrary to the laws of the land and was therefore banned.

2.9 The authors lodged an appeal against their conviction with the Supreme Court of Uzbekistan, which, on 6 October 1999, upheld their appeal against the charges under article 156, part 2 (e), article 242, part 1, and article 244-1, part 3 (c), of the Criminal Code. The Court dismissed the appeal against their conviction under article 159, but reclassified the authors’ offences from part 4 of article 159, to part 3 (b) thereof. In what the authors consider to be an oversight,² the Supreme Court did not rule on their conviction under article 216. Despite the partial success of their appeal, the Court left their sentence of a total of 16 years’ imprisonment unchanged. In 2002, five applications for review were lodged with the Supreme Court and two with the Office of the Prosecutor-General. All were rejected.

2.10 A. K. was amnestied under a Presidential decree issued on 1 December 2004 to mark the twelfth anniversary of the adoption of the Constitution, and he was freed in the middle of February 2005.

The complaint

3.1 The authors claim that their arrest and conviction constitute violations of articles 7, 9, 10, 14, 15 and 19 of the Covenant.

3.2 The authors claim that the group of experts had no objective point of reference and that, because it received instructions from the prosecutor’s office, it was not independent. They make the further general point that no official or published lists of banned works in Uzbekistan existed either before or after their conviction. They submit that they were convicted because of their religious views and activities. They state that they were not afforded the benefit of the presumption of innocence because they were convicted in the absence of any evidence supporting any of the charges. According to them, the convictions amount to breaches of articles 29 and 31 of the Uzbek Constitution, which guarantee freedom of thought and religion.

² The relevant part of the Supreme Court’s ruling reads: “to uphold the remaining part of the sentence”.

State party's observations on admissibility and merits

4.1 On 18 October 2006, the State party reiterated the facts related to the authors' conviction and added that from 1994 to 1999, the authors had been members of Hizb ut-Tahrir, an extremist religious organization banned in Uzbekistan. During their membership of this organization, they had engaged in criminal activities by distributing information and written materials with a view to spreading the ideology of religious extremism, separatism and fundamentalism. To that end, they had propounded an ideology advocating the establishment of an Islamic State, the replacement of the existing constitutional order in Uzbekistan by anti-constitutional means and the political and social destabilization of the country.

4.2 According to the above-mentioned group of experts, the written materials seized in the authors' homes were consistent with the ideology of the Hizb ut-Tahrir extremist religious sect. The authors' guilt had been further confirmed by eye-witnesses' testimony, as well as relevant documentary and other evidence. The State party submitted that the court had correctly qualified the offences with which they were charged and had imposed appropriate sentences taking into account the level of "public danger" posed by their crimes. It added that the investigation and the authors' trial had been conducted in conformity with the Uzbek Code of Criminal Procedure, and that all testimony, statements and evidence had been thoroughly examined and assessed.

4.3 The State party explained that the authors were serving their sentences in the UYA 64/71 colony in Jaslyk. They had been punished seven times by the prison authorities for breaches of internal regulations, but they had not complained about living conditions in the colony during interviews with the authorities.

4.4 The State party submits that the authors' allegations that they were convicted because of their religious beliefs are groundless. The Constitution of Uzbekistan guarantees the right to freedom of conscience to all citizens. Everyone has the right to profess or not to profess a religion; criminal responsibility does not stem from a person's profession of religious faith or his or her beliefs. As members of Hizb ut-Tahrir, an extremist religious organization banned in Uzbekistan, the authors had pursued criminal activities to overthrow the constitutional order of Uzbekistan and destabilize the country politically and socially.

Authors' comments on the State party's observations

5.1 On 23 February 2007, the authors reiterated the facts of their case. They further argued that the Supreme Court, by dismissing the charges under article 156, part 2 (e), article 242, part 1 and article 244, part 3 (c) of the Criminal Code, implicitly admitted that the charges under article 159, part 3, were groundless and unlawful.

5.2 However, once the charges related to the organization of a criminal association (art. 242, part 1), the production and distribution of material threatening public order and security, with the financial or practical support of religious organizations and of foreign countries, organizations and individuals (art. 244-1, part 3 (c)) and conspiring to incite national, racial or religious hatred (art. 156, part 2 (d)) had been dismissed, the charge under article 159, part 3, could not stand in that it could no longer be held that the conditions required to demonstrate that the acts in question amounted to recidivism or revealed the existence of an organized group were met. The

sentence imposed by the Samarkand Regional Court on 6 August 1999 and upheld by the Supreme Court of Uzbekistan on 6 October 1999 is therefore unlawful and should be set aside.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any complaint contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2, of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement, and notes that, despite the fact that A. K. did not contest his conviction on appeal and that A. R. accepted partial guilt on appeal, the State party has not denied that domestic remedies have been exhausted in the present case.

6.3 With regard to the authors' allegations under articles 7, 9, 10, 14 and 15 of the Covenant, the Committee notes the absence of any information on these claims and considers that they have not been duly substantiated, for the purposes of admissibility. Hence this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.4 The Committee considers that the authors' remaining claims, under article 19, have been sufficiently substantiated for the purposes of admissibility, and declares them admissible.

Consideration of the merits

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

7.2 The Committee notes that the authors were convicted of offences related to the dissemination of the ideology propagated by Hizb ut-Tahrir. The issue before the Committee is whether the restrictions that the convictions represented were necessary for one of the purposes listed in article 19, paragraph 3. The Committee has carefully studied the report of the group of experts (paragraph 2.4), the judgment of the Samarkand Regional Criminal Court and the appellate Ruling of the Criminal Division of the Supreme Court of Uzbekistan. From these, it is apparent that the courts, while not explicitly addressing article 19 of the Covenant, were concerned with a perceived threat to national security (violent overthrow of the constitutional order) and to the rights of others. The Committee also notes the careful steps, in particular the consultation with the group of experts, engaged in by the judicial process. Moreover, the Committee takes account of the fact that, on appeal, A. K. appears not to have challenged his conviction, but rather appealed for a fairer sentence, while A. R. accepted his conviction under article 216. Under these circumstances, the Committee cannot conclude that the restrictions imposed on the authors' expression were incompatible with article 19, paragraph 3.

7.3 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 do not disclose a violation of any of the articles of the International Covenant on Civil and Political Rights.

[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.]
