



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Ninety-sixth session  
13 to 31 July 2009

**VIEWS**

**Communication No. 1378/2005**

Submitted by: Mr. Mansur Kasimov (not represented by counsel)

Alleged victim: Yuldash Kasimov, the author's brother

State party: Uzbekistan

Date of communication: 12 April 2005 (initial submission)

Document References:

- Special Rapporteur's rule 92/97 decision, transmitted to the State party on 13 April 2005 (not issued in document form).
- CCPR/C/86/D/1378/2005 – Decision on admissibility, adopted on 6 March 2006.

Date of adoption of Views: 30 July 2009

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\* Made public by decision of the Human Rights Committee.

*Subject matter:* Death sentence after unfair trial; use of torture during preliminary investigation

*Procedural issues:* None

*Substantive issues:* Right to be represented by counsel of own choice; death sentence imposed after an unfair trial.

*Articles of the Covenant:* 6(1), (4), and (6); 7; 9(1)-(4); 10; 14(1)-(4); 16

*Article of the Optional Protocol:* 2

On 30 July 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.1378/2005.

[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-sixth session

concerning

**Communication No. 1378/2005\***

<u>Submitted by:</u>	Mr. Mansur Kasimov (not represented by counsel)
<u>Alleged victim:</u>	Mr. Yuldash Kasimov, the author's brother
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	12 April 2005 (initial submission)
<u>Decision on Admissibility:</u>	6 March 2006

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

Meeting on 30 July 2009,

Having concluded its consideration of communication No. 1378/2005, submitted to the Human Rights Committee on behalf of Mr. Yuldash Kasimov 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

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Mohammed Ayat, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

The text of an individual opinion signed by Committee member Mr. Fabian Omar Salvioli is appended to the present Views.

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

1.1 The author of the communication is Mr. Mansur Kasimov, an Uzbek national. He submits the communication on behalf of his brother, Yuldash Kasimov, also an Uzbek national, born in 1985, who, at the time of submission of the communication, was imprisoned in Uzbekistan and was awaiting execution of a death sentence handed down by the Tashkent City Court on 3 March 2005. The author claims that the State party violated his brother's rights under article 6, paragraphs 1, 4, and 6; article 7; article 9, paragraphs 1-4; article 10; article 14, paragraphs 1- 4; and article 16, of the Covenant.

1.2 On 13 April 2005, pursuant to rule 92 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 Mr. Kasimov's execution while his case is examined by the Committee. On 13 June 2005, the State party informed the Committee that it had acceded to its request to suspend the execution, pending the Committee's final decision. On 8 July 2005, the Special Rapporteur on New Communications and Interim Measures decided to have the admissibility of the communication examined separately from the merits. On 12 June 2006, the State party informed the Committee that following a decision of the Supreme Court of Uzbekistan taken on 22 November 2005, Mr. Kasimov's death sentence was commuted to a 20 years' prison term.

1.3 The Optional Protocol entered into force for the State party on 28 December 1995.

#### **The facts as presented by the author**

2.1 On the morning of 26 June 2004, the author discovered the bodies of his parents in their home, and called the police. Later that day, his brother, Mr Yuldash Kasimov, was arrested, and was charged with the murders on 29 June 2004.

2.2 According to the author, following his arrest, his brother was subjected to torture and severely beaten during interrogation; his girlfriend was also beaten in his presence. The author adds that he too was arrested and severely beaten by investigators for a period of three days. The objective of the torture and beatings was to force one of the brothers to confess to their parents' murder. The author states that his brother, who was 19 years old at the time, did not withstand the violence and psychological pressure applied by the police, and "confessed" to the murder.

2.3 According to the author, during the first two weeks of the investigation, a lawyer whom he had hired to represent his brother was not granted access to him. After his brother was finally allowed to meet with this lawyer, he immediately wrote to the Prosecutor's Office, retracting his confession.

2.4 The author claims that the investigation and trial of his brother were marred by numerous irregularities: many defence witnesses were not called nor examined, without any reason being given by the judge; and the judge threatened certain defence witnesses with reprisals (form of reprisal is not specified).

2.5 The author's brother retracted his "confession" in Court, and a video recording of the interrogation was examined during the trial. According to the author, it was obvious from this

video that his brother had been beaten as bruises on his body were visible, and it appeared that his brother had difficulties speaking and moving. However, the Court apparently ignored these visible bruises.

2.6 Further, no examination was conducted to establish whether there was any evidence of gunpowder residue on his brother's hands or clothes, which would have been present if he had fired the shots from the handgun which killed his parents. Such residue cannot be washed off and remains identifiable for several weeks.

2.7 On 3 March 2005, the Tashkent City Court found Mr Kasimov guilty of his parents' murder and sentenced him to death. The Court allegedly based its conviction solely on Mr Kasimov's confession, which was obtained under torture and in the absence of a defence lawyer. According to the author, no information existed in the criminal case file about the name of the investigator who recorded Mr. Kasimov's confession, nor the names of any other persons in whose presence the confession was made.

2.8 The author appealed to the appellate body of the Tashkent City Court, which on 12 April 2005 upheld the conviction and sentence. According to the author, this judgment is final and executory. Further complaints to the Ombudsman, and the President's office, including a request for clemency, were unsuccessful.

2.9 The author affirms that his brother is innocent and notes that his father, a senior Interior Ministry Official, had several enemies since he had been an honest and incorruptible individual. According to the author, his father had received death threats prior to his assassination. The author adds that the police search of the parents' apartment revealed no fewer than 23 fingerprints, which did not match those of any family members. However, this was not investigated.

### **The complaint**

3. The author claims that his brother was wrongly convicted after an unfair trial, which relied on a forced confession extracted under duress. He claims that the State party violated his brother's rights under article 6, paragraphs 1, 4, and 6; article 7; article 9, paragraphs 1 – 4; article 10; article 14, paragraphs 1 – 4; and article 16, of the Covenant.

### **State party's observations on admissibility and merits**

4.1 In its submission dated 13 June 2005, the State party challenged the admissibility of the communication. On the facts of the case, it noted that Mr. Kasimov was convicted of the murder of his parents and various other offences under the Uzbek Criminal Code.

4.2 The State party invokes a large body of evidence which in its view confirms Mr Kasimov's guilt. Mr Kasimov voluntarily presented himself to the authorities and gave a detailed confession of the murders. He told the police that, approximately one week before his parents' murder, he had formed the idea to kill them in order to avoid being held accountable for having stolen a large amount of money from his father. At approximately 4.30 a.m. on 26 June 2004, he went to the bedroom where his parents were sleeping and shot them with his father's pistol and silencer. He then drove to a friend's summer house, near the Chirchik River in Kibrai district, where he

threw the pistol into the river. The pistol was later retrieved from the river bed by the police, and ballistic tests proved that it was the murder weapon.

4.3 The State party contends that the criminal investigation and trial of Mr Kasimov took place without any violations of the Uzbek criminal procedure law or the provisions of the Covenant. It denies the allegations that Mr Kasimov: was beaten in order to obtain a confession; that he was denied access to lawyer for two weeks; and that the court placed pressure on the defence witnesses and made threats of reprisals. According to the State party, these allegations are groundless and are refuted by the evidence in the criminal case file:

- A video recording was made of evidence being taken from Mr Kasimov, in the presence of a lawyer. This was displayed and shown in Court. Mr Kasimov appeared relaxed, freely providing a detailed and comprehensive account of how he had stolen the money from his father, how he had murdered his parents, and where he had disposed of the gun.
- Two senior officers from the Mirzo-Ulugbekski district internal affairs department testified that no ‘unauthorized investigative methods’ had been used against Mr Kasimov. According to a forensic medical examination carried out on Mr Kasimov on 22 September 2004, his body showed no signs of injuries. A forensic expert confirmed this in court. In addition, after Mr Kasimov’s allegation that unauthorized investigation methods had been used against him during the pre-trial investigation, an internal inquiry was conducted that failed to substantiate his complaint.
- Mr Kasimov was interrogated as a witness and then as a suspect on 27 June 2004, and again on 29 June 2004, on each occasion in the presence of a lawyer. He did not complain of any mistreatment at those times.

4.4 According to the State party, Mr Kasimov’s actions were correctly qualified by the court, and the punishment he was given was commensurate with his crime. Allegations that unauthorized methods were used against him during the pre-trial investigation were found to be groundless. From the very moment of being taken into custody, during all interrogations and investigative stages, and also at his trial, he was represented by lawyers.

#### **Author’s comments on State party’s submission**

5.1 In his comments on the State party submission, dated 18 October 2005, the author reiterated that his brother’s confession was extracted under torture, and that the confession was dictated to his brother by investigators; details of these violations were included in the complaint to the procurator’s office. He noted that the trial court conducted only a formal review of the case file, did not address the procedural mistakes made in the investigation, and generally sides with the prosecution. The appeal court reviewed the case only superficially. The author reiterated that his parents were murdered by unidentified criminals.

5.2 The author reiterated that for a period of 10 days, Mr Kasimov was not allowed to meet with the lawyer whom the author had hired. He provides further details of Mr Kasimov’s torture, and states that at one point, a police truncheon was covered with vaseline and inserted into his

brother's anus. His brother was then forced to sign a statement, after which the police conspired to recover a pistol from the Chirchik River, falsely claiming it to be the murder weapon.

5.3 The author claimed that the Court violated his brother's right to the presumption of innocence, and did not express doubt about the evidence in his brother's favour, as required under Uzbek law.

5.4 Finally, the author noted that the Court did not take into account the fact that Mr Kasimov was only 19 years old, and that he had no previous criminal record. Article 97 of the Criminal Code provides that the sanction for murder is 15 to 20 years imprisonment, with capital punishment to be used only as an "exceptional measure of punishment".

## **Issues and proceedings before the Committee**

### **Consideration of admissibility**

6.1 The Committee examined the admissibility of the communication during its 86<sup>th</sup> session, on 6 March 2006. It established, first, that the same matter has not been submitted for examination under another procedure of international investigation or settlement and noted that the State party has not presented any objection in relation to the issue of exhaustion of domestic remedies. It concluded that the conditions set forth in paragraphs 2 (a) and (b) of article 5 of the Optional Protocol have thus been satisfied.

6.2 The Committee noted the author's allegations of violations of article 14, paragraph 4, and of article 16. In the absence of any detailed information in substantiation of these allegations, it considered that the author has failed sufficiently to substantiate these claims, for purposes of admissibility, and this part of the communication was declared inadmissible under article 2 of the Optional Protocol.

6.3 On the claims under articles 7, 10 and 14, paragraph (3) (g), the Committee noted that the author had provided detailed information about his brother's alleged torture and forced confession at the hands of investigation authorities. It noted that the State party denied that Mr Kasimov was subjected to torture and affirmed that two officers testified that no torture took place. The Committee noted, however, that no information about their knowledge of the matter or their evidence was provided. On the State party's affirmation that a forensic examination of Mr. Kasimov showed no signs of injuries, the Committee noted that, however, the examination in question occurred on 22 September 2005, i.e. nearly three months after Mr Kasimov's arrest. It also noted that no specific details were provided about its results nor the "internal inquiry" conducted into Mr Kasimov's complaints of torture. Accordingly, the Committee considered that the author's allegations under articles 7, 10, and 14, paragraph 3(g), were sufficiently substantiated, and declared them admissible.

6.4 On the author's claim that his brother was convicted solely on the basis of his allegedly forced confession, without proper legal representation, and that his brother's lawyer had no access to him during the first two weeks of the investigation (see para. 2.3), the Committee noted that the State party had referred to other evidence adduced in Court, and reiterated that Mr. Kasimov's complaints (to the Court) about torture were found to be groundless; it also contended that at all times he had access to a lawyer, without however refuting the allegation

that he had no access to his *privately hired* lawyer. The Committee noted the author's claim that neither the name of the investigator who recorded his brother's confession nor the names of the other persons present when the confession was made are included in the case file. The Committee noted that the State party had not commented on these allegations, let alone refuted them. Accordingly, it concluded that they were sufficiently substantiated, and declared them admissible as raising issues under articles 9 and 14, paragraphs 1, 2, and 3 (b), of the Covenant.

6.5 The Committee has further noted the author's claim that several defence witnesses were not examined, and that some were threatened with "reprisals" by the court. In this regard, the Committee noted that the author has not clarified how and why these testimonies would be or would have been of relevance to the case. However, given that the State party had simply rejected this allegation as groundless, without providing more specific information, the Committee considered this allegation to be sufficiently substantiated, for purposes of admissibility, in relation to article 14, paragraph 3 (e), and declared it admissible.

6.6 Consistent with its jurisprudence, the Committee considered that, since the author's claim under article 14 that his brother was sentenced to death after an unfair trial was declared admissible, so was his claim under article 6.

6.7 The Committee requested the State party to submit its comments on the merits of the case within six months. It also invited the State party to provide it with information on the reasons that led the court to refuse the examination of defence witnesses; to detail the results of the internal inquiry into Mr. Kasimov's allegation of torture, in particular in how the inquiry was conducted and with what results; and to comment on the author's allegation that his brother could not access his privately hired lawyer during the first two weeks of the investigation. The author was requested (a) to provide detailed information and evidence about defence witnesses having been refused examination by the court, and (b) to explain when he hired the private lawyer and when this private lawyer was allowed to see his client.

### **State party's observations on the merits**

7.1 The State party presented its merits observations on 12 June 2006. It recalls that Mr. Kasimov was convicted, on 3 March 2005 by the Tashkent City Court, for the murder of his parents and other crimes, and was sentenced to death. On 22 November 2005, the Supreme Court commuted his sentence to 20 years' imprisonment.

7.2 The State party recalls the facts of the case: from February to June 2004, Mr. Kasimov had stolen money belonging to his father totalling the equivalent of 20 000 US dollars. He spent the money with his girlfriend, S.A.

7.3 At around 4.30 a.m. on 26 June 2004, the author's brother entered the bedroom of his parents who were sleeping and shot his father in the head once, and his mother in the head twice, with a pistol belonging to his father. His parents died from their injuries.

7.4 After collecting the bullet cases from the crime scene, he arrived by car to the house of one T.M., at the settlement "Pobeda", where he threw the pistol, a silencer, and the bullet cases into the Chirchik River.



7.5 According to the State party, Mr. Kasimov's guilt is confirmed not only by his confessions made in the presence of a lawyer at the preliminary investigation, but also by other evidence, including:

- (a) depositions of his girlfriend according to which he was offering her expensive gifts and was inviting her to expensive restaurants, etc;
- (b) depositions of the girlfriend's mother according to which Mr. Kasimov lent 7900 US dollars to her husband; concurrent testimonies by witnesses R.A., S.S., and T.M.;
- (c) testimony of one V.M, according to whom Mr. Kasimov paid him 1000 US dollars services as a driver;
- (d) the deposition of one N.T. that in May and June 2004, Mr. Kasimov rented his apartment for 500 US dollars a month;
- (e) testimony of one A.A., a manager of a restaurant, who confirmed that Mr. Kasimov has rented the whole restaurant on 25 June 2004, paying 1000 US dollars for that;
- (f) the testimony of Mr. T.T., who was present when the police found the pistol in the Chirchik river; it was Mr. Kasimov who pointed out the exact location of the pistol;
- (g) the testimony of one S.S., who confirmed that on 26 June 2004, at 5.05 a.m., Mr. Kasimov had asked him to drive him to a place near the lake "Rakhat".

7.6 The State party also refers to the conclusions of a number of medical-forensic and ballistic experts.

7.7 The State party further contends that the examination of the author's case in light of the Committee's admissibility decision, permitted it to establish that no violation of Mr. Kasimov's rights under the Covenant occurred in his case.

7.8 The Supreme Court of Uzbekistan examined the case and, on 22 November 2005, taking into account Mr. Kasimov's age and the fact that he had no prior convictions, commuted his death sentence to a 20 year prison term. His penalty was further reduced by one-quarter, as two different general amnesty acts applied to his case.

7.9 According to the State party, neither during the preliminary investigation nor in the court was it established that the author's brother, his girlfriend, or other witnesses in the case, had been subjected to unlawful methods of investigation. During the preliminary investigation, Mr. Kasimov's allegation of the use of unlawful methods of investigation or physical and psychological pressure were examined, including through interrogations and visual confrontations, and were not confirmed. As a result, on 25 September 2004, the criminal case against the officials of the Mirzo-Ulugbekski district department of Internal Affairs was shelved.

7.10 In court, the investigators in charge of Mr. Kasimov's case – M.K. and U.N. – denied using unlawful methods of investigation in the investigation of the case. According to the conclusions of a medical-forensic examination, Mr. Kasimov's body disclosed no injuries. Also, the medical

expert who conducted the examination confirmed in court that the alleged victim's body did not reveal any injury.

7.11 The State party recalls that the video record of the verification of the confessions of Mr. Kasimov at the crime scene was also examined by the court. The record was made in the presence of a lawyer. From it, it was clear that the alleged victim provided without any form of coercion, voluntary and detailed explanations on the theft of the money, the pistol, and the circumstances of the murder of his parents. He pointed out a cache where the pistol and the money were kept, as well as the exact location where the pistol and the silencer were discarded after the murder. He pointed out exactly how and from where he fired the shots, and ammunition was seized in his parents' home.

7.12 According to the State party, from the moment of Mr. Kasimov's arrest, all interrogations or investigation acts, as well as all court's sessions, were conducted in the presence of the Tashkent bar lawyers R.A., G.G., a lawyer of the Chilanzar district bar, E.A., four other lawyers from law firms, and V.I. from the Judicial Consultation in relation to minors, V.I.

7.13 The examination of the first instance trial transcript shows that Mr. Kasymov's lawyers twice requested that additional witnesses be interrogated in court – the experts P.K. and U. I.; the experts, S., F., and S.; two police officers from the Mirzo-Ulugbekski district department of the Internal Affairs, N. and K.; the investigators from the Tashkent Prosecutor's Office N. and B.; the experts N., T., and the witness T.T. All these defence requests were granted, and thus all depositions made on Mr. Kasimov's behalf were examined by the court. The State party concludes that no violations of the Criminal Procedure legislation occurred in the present case, and thus Mr. Kasimov's conviction met all procedural standards.

8. The author did not comment on the State party's submissions, despite three reminders (sent in 2006, 2008, and 2009).

### **Consideration of the merits**

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

9.2 The author has claimed that his brother's rights under articles 9, and 14, paragraphs 1, 2, and 3 (e) were violated. The State party contends that no violation of Mr. Kasimov's procedural rights occurred, that the courts correctly assessed his case, and that his guilt was established on the basis not only of his video-recorded confessions, but also on the basis of additional and extensive corroborating evidence. The Committee also notes that the State party has contended that Mr. Kasimov was represented by a lawyer from the moment of his arrest, and that this was not contested by the author. It further notes that the State party provided it with a list of the requests filed by Mr. Kasimov's lawyers to have additional experts and witnesses interrogated, and its contention that *all* these requests were granted. In the absence of any comments from the author and any other pertinent information on file in this respect, the Committee decides that the facts before it do not reveal any violation of Mr. Kasimov's rights under articles 9 and 14, paragraphs 1, 2, and 3 (e), of the Covenant.

9.3 The author also claims that his brother was beaten and tortured by investigators after his arrest, and was forced to confess his guilt. The State party has rejected this claim by contending that the court interrogated two investigators, and that they denied using unlawful methods of investigation against the alleged victim. It also contends that a criminal case was opened as a result of Mr. Kasimov's torture claims, but that it was subsequently closed. The Committee also notes that the State party has referred to a forensic-medical examination that was carried out on 22 September 2004, according to which Mr. Kasimov's body displayed no signs of injuries.

9.4 The Committee notes that the State party's reply does not provide detailed answers to the questions that were put to it in the Committee's admissibility decision of 6 March 2006. Thus, the State party has failed to explain how the internal inquiry into the complaints of torture (paragraphs 4.4 and 5.2) was conducted, beyond reference to 'interrogations and visual confrontations'. On this basis, an apparent criminal case against local officials of the Department of Internal Affairs was shelved. No other evidence of a serious criminal inquiry was offered. The only other evidence of any inquiry into the allegations that was offered by the State party seems to have consisted of questioning by the court of the investigators involved and a forensic medical report. The investigators' predictable denials were believed, a circumstance that does not amount to convincing treatment of the allegations. The fact that a forensic medical report issued some three months after the ill-treatment complained of 'disclosed no injuries' (paragraphs 4.3 and 7.10) can similarly not be taken as convincing refutation of the allegations.

9.5 The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially<sup>1</sup>. It considers that in the circumstances of this case, the State party has not demonstrated that its authorities adequately addressed the torture allegations advanced by the author, in the context of any internal inquiry, any criminal proceedings against those responsible for the alleged ill-treatment, or by way of judicial inquiry into the reliability of the evidence against the author's brother. Accordingly, due weight must be given to the author's allegations. The Committee concludes, in the absence of any more detailed information from the State party, that the facts before it disclose a violation of the rights of Mr. Kasimov under articles 7 and 14, paragraph 3 (g), of the Covenant. In the light of this conclusion, it is unnecessary to examine separately the author's claims under article 10 of the Covenant.

9.6 The author has also claimed that his brother's defense rights were violated, as the latter was unable to meet with his privately hired lawyer during the first two weeks after arrest. It was exactly during this time period that Kasimov was charged with the murders of his parents. The Committee further notes that, although the State party contends that all interrogations and investigation acts, as well as all court sessions, were carried out in the presence of lawyers, it does not deny that, at the early stages of Mr. Kasimov's detention, he could not communicate with lawyers of his own choosing. In the circumstances of the present case, the Committee concludes that in preventing the brother of the author to access the counsel of his choice for ten

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<sup>1</sup> General Comment on article 7, No. 20 [44], adopted on 3 April 1992, paragraph 14.

days, and by obtaining his confessions during that period, the State party's authorities did violate Mr. Kasimov's rights under article 14, paragraph 3 (b) of the Covenant<sup>2</sup>.

9.7 The author claims a violation of article 6 of the Covenant, as Mr. Kasimov's death sentence was imposed after an unfair trial that did not meet the requirements of article 14. 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 Covenant<sup>3</sup>. In the present case, however, Mr. Kasimov's death sentence was commuted by the Supreme Court of Uzbekistan, on 22 November 2005. In these circumstances, the Committee considers it unnecessary to examine separately the author's claim under article 6.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 7 and article 14, paragraphs 3 (b) and (g), of the International Covenant on Civil and Political Rights.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author's brother with an effective remedy, including the payment of adequate compensation, initiation and pursuit of effective investigation and criminal proceedings to establish responsibility for Mr. Yuldash Kasimov's ill-treatment, and, unless he is released, a retrial with the guarantees enshrined in the Covenant. The State party is also under an obligation to prevent similar violations in the future.

12. 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.

[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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<sup>2</sup> See, for example *Kelly v. Jamaica*, Communication No. 537/1993, Views adopted on 29 July 1997.

<sup>3</sup> See, *inter alia*, *Safarmo Kurbanova v. Tajikistan*, Communication No. 1096/2002, Views adopted on 6 November 2003, paragraph 7.7.

APPENDIX

**Individual opinion of Committee Member Mr. Fabián Omar Salvioli (partly dissenting)**

1. In general I concur with the deliberations and conclusions of the Human Rights Committee in communication No. 1378/2005, *Kasimov v. Uzbekistan*. I regret, however, that I cannot agree with the Committee's findings in the final part of paragraph 9.7, where it states that it considers it unnecessary to examine separately the author's claim of a violation of article 6 in view of the commutation by the Supreme Court of Uzbekistan, on 22 November 2005, of the death sentence imposed on Mr. Kasimov.
2. The Committee recalls in paragraph 9.7 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 Covenant". That being so, it is difficult to see why the Committee did not find a violation of article 6 in this case when it found violations of articles 7 and 14 of the Covenant during Mr. Kasimov's trial.
3. Uzbekistan has made significant advances in its domestic legislation in terms of respect for and guarantees of the right to life, as shown by the fact that on 23 December 2008 the State ratified the second Optional Protocol to the International Covenant on Civil and Political Rights, thereby demonstrating its commitment to the abolition of capital punishment. Moreover, in the *Kasimov* case, the Committee had requested interim measures, to which the State replied on 13 June 2005 informing the Committee that it had acceded to its request to suspend the execution pending the Committee's final decision. This demonstrates the State's fulfilment in good faith of the international obligation undertaken on ratification of the International Covenant on Civil and Political Rights to take the necessary measures to give full effect to the Committee's decisions.
4. The above does not excuse the Committee from giving an opinion on the facts of a specific case, as considered under this individual communication. In my view it is inappropriate - most pertinently for the purposes of proper reparation - for a body such as the Committee to fail to give an explicit opinion on a violation of a human right recognized in one or more articles of the International Covenant on Civil and Political Rights.
5. In its general comment No. 6, the Human Rights Committee states that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence ..." (Human Rights Committee, sixteenth session (1982), general comment No. 6: article 6 (Right to life), para. 7.)

6. A violation of article 6, paragraph 2, exists regardless of whether the death penalty was actually carried out. As the Committee itself has stated before, “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 Covenant” (communication No. 1096/2002, *Kurbanova v. Tajikistan*, CCPR/C/79/D/1096/2002, para. 7.7). That finding was based on earlier decisions in which the Committee stated that a preliminary hearing that failed to observe the guarantees of article 14 violated article 6, paragraph 2, of the Covenant (*Conroy Levy v. Jamaica*, communication No. 719/1996, para. 7.3, and *Clarence Marshall v. Jamaica*, communication No. 730/1996, para. 6.6).

7. In the interpretation of human rights law, and in the name of progress, an international body may amend a view it previously held and replace it with an interpretation that provides greater protection for the rights contained in an international instrument: this constitutes appropriate and necessary development of international human rights law.

8. The reverse procedure is not acceptable, however: it is not appropriate to interpret human rights provisions more restrictively than before. The victim of a violation of the Covenant deserves at least the same protection as that provided in cases considered previously by the same body.

9. Consequently, and without wishing to minimize the steps taken by Uzbekistan in respect of the abolition of the death penalty, I am of the opinion that, in the Kasimov case, the Committee should also have found a violation of the right contained in article 6, paragraph 2, of the International Covenant on Civil and Political Rights.

[Signed]: Mr. Fabián Omar Salvioli

[Done in Spanish, English and French, the Spanish 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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