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Views

Communication No. 1545/2007

Submitted by:	Ahmet Gunan (represented by counsel, Nina Zotova)
Alleged victim:	The author
State Party:	Kyrgyzstan
Date of communication:	29 January 2007 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 28 February 2007 (not issued in document form)
Date of adoption of Views:	25 July 2011

* Made public by decision of the Human Rights Committee.

Subject matter:	imposition of a death penalty after an unfair trial
Procedural issue:	none
Substantive issues:	right to an effective remedy; right to life; prohibition of torture or cruel, inhuman or degrading treatment; right to liberty and security; right to a fair trial; right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; right to legal assistance; self-incrimination;
Articles of the Covenant:	2 (3); 6; 7; 9; 10 (1); 14 (1); 14 (3) (b), (d) and (g);
Articles of the Optional Protocol:	none

On 25 July 2011, 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. 1545/2007.

[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 (102nd session)

concerning

Communication No. 1545/2007**

Submitted by:	Ahmet Gunan (represented by counsel, Nina Zotova)
Alleged victim:	The author
State Party:	Kyrgyzstan
Date of communication:	29 January 2007 (initial submission)

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

Meeting on 25 July 2011,

Having concluded its consideration of communication No. 1545/2007, submitted to the Human Rights Committee on behalf of Mr. Ahmet Gunan, 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 of the communication, dated 29 January 2007, is Mr. Ahmet Gunan, a Turkish national born in 1968. At the time of submission of the communication he was detained on death row in the Investigation isolator (SIZO) no. 1 in Bishkek[1]. The author claims to be a victim of a violation by Kyrgyzstan of his rights under articles 2, paragraph 3; 6; 7; 9; 10, paragraph 1; 14, paragraphs 1, 3(b), 3(d) and 3 (g), of the International

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zonele Majodina, Mr. Gerald L. Neuman, Mr. Rafael Rivas Posada, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

The texts of three individual opinions signed by Committee members Mr. Rafael Rivas Posada, Mr. Yuji Iwasawa, Mr. Cornelis Flinterman, Mr. Rajsoomer Lallah and Mr. Fabían Omar Salvioli are appended to the text of the present Views.

[1] The author's penalty had not been carried out because of the introduced moratorium on death penalty. On 9 November 2006, the death penalty in Kyrgyzstan was abolished. Notwithstanding, the author claims that his death sentence had not been reviewed and at the time of the submission to the Human Rights Committee was still in force.

Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 7 January 1995. The author is represented by counsel.

Factual background

2.1 On 21 May 1998, an unidentified person left a bag with an improvised explosive device (hereinafter IED) in a minibus in the city of Osh, Kyrgyzstan. The person asked the driver to wait for him, but did not come back at the time of departure, and the driver handed the bag to a trusted person in order to return it to the owner. As no one claimed the bag, it was given to Mr. S., the watchman of the mosque, to store it until claimed by the owner. As no one claimed it, the watchman took the bag home. On 1 June 1998, the IED in the bag accidentally exploded in the watchman's kitchen, killing two persons and severely wounding a third one.

2.2 On 30 May 1998, around 10 p.m., an unidentified person left another bag with an IED in a minibus which exploded 30 minutes later, killing two persons and wounding eleven. A criminal case was initiated in relation to the explosions on 2 June and 31 May 1998 respectively, without any suspect being identified.

2.3 On 12 July 1998, a car was stopped by the police in Almaty, Kazakhstan, for a regular check. The author, Mr. Gunan, was one of the passengers, together with three other persons. During the search the police found in the car a carrier bag with a grenade, eight IEDs, seven self-made detonators, electrical detonating fuses, a battery for detonating fuse and a "Makarov" pistol. A criminal case was opened in Kazakhstan against the author and the other three passengers for illegal acquisition, storage and transportation of prohibited objects. On 11 February 1999, after examining the author's case, the Auezovsk District Court of Almaty referred the case back to the Prosecutor's Office for lack of sufficient investigation and elimination of procedural shortcomings committed during the pre-trial investigation.

2.4 Meantime, during the criminal investigation carried out by Kyrgyz authorities into the explosion incidents, a connection was established between one of the suspects for the blasts, one A., and the author (who was arrested on 12 July 1998 in Kazakhstan). On 25 November 1998, the Investigative Department of the Osh Region decided that the author should be arrested on suspicion of terrorism and the Prosecutor of the Osh Region sanctioned his arrest. On 2 February 1999, in accordance with the Minsk Convention on legal assistance and legal relations in civil, family and criminal matters (adopted on 22 January 1993), the Kyrgyz authorities submitted to the General Prosecutor of Kazakhstan a request for the extradition of the author and the other three persons arrested with him in Almaty. On 14 May 1999, the author was extradited from Kazakhstan to Kyrgyzstan and placed in the Investigation Isolator (SIZO) No.1 in Bishkek.

2.5 The following day, the author was taken to the Pervomaisk Department of the Interior (police). He claims that a black plastic bag was put over his head and he was subjected to different forms of ill-treatment by officers of the National Security Service. He was beaten with sticks all over his body. He was also beaten by one police officer on the soles of his feet with a truncheon, while two other officers were holding his feet. After three days of this kind of treatment, because of swollen feet and bone pain, the author could not walk and had to be carried from the cell to the investigator's office by two men. Furthermore, he could not chew, as his jaws-bones were dislocated. Not able to withstand the torture, the author signed several incriminating statements in the absence of a lawyer[2],

[2] The author claims that counsel was not present during these interrogations. Counsel was appointed by the investigator only on 30 July 1999.

where *inter alia* he confessed that he had participated in a military training camp in Chechnya together with the other co-accused. Although during the court proceedings all of them retracted these statements, claiming that the confession was extracted by torture and showing marks of ill-treatment on their bodies, their self-incriminating statement was used by the courts as a basis for their conviction: the first instance court concluded that the author, together with the co-accused, participated in a military training camp in Chechnya, and set up and run a criminal organization specialized in carrying out terrorist acts. After the interrogations, they were all taken back to SIZO No. 1, and there the officers of SIZO refused to accept him in the facility because of his poor condition. After long negotiations the author was finally handed over to them by the officers of the Pervomaisk Department of the Interior.

2.6 On an unspecified date, the author was transferred to Osh, where he was again subjected to systematic torture by officers of the National Security Service. The investigator, one T., beat up the author in the presence of a defence lawyer, who the investigator had himself assigned to the author. On one occasion, Mr. T. put a pistol to the author's head and threatened to shoot him[3]. Out of fear, the author did not specifically complain about the torture he endured and did not petition for a medical examination during the pre-trial investigation. His *ex officio* counsel appointed by the National Security Service did not submit any complaint either. Notwithstanding, the author submits that he and his co-accused openly showed marks of ill-treatment on their bodies during the appeal proceedings before the Appeal College on Criminal Cases of the Osh Regional Court of 3 August 2000, and claimed that they were forced to sign the report of the interrogation conducted in the absence of a lawyer (for more details, *see* para. 2.7).

2.7 On 3 May 2000, the Osh City Court found the author guilty of murder of four persons[4], terrorism, membership in a criminal organization and illegal acquisition and storage of arms and explosives, and sentenced him to 22 years' imprisonment. The author and his co-accused pleaded not guilty. The author has never assumed responsibility for the explosions in Osh, maintaining that he is innocent and he had never been in Osh or Kyrgyzstan before (as demonstrated by his travel documents). The first instance court, as well as the higher courts failed to provide any evidence to the contrary and simply concluded that the author crossed the border illegally. According to the transcript of the court proceedings, the author retracted his statement that he participated in a military training camp in Chechnya, claiming that he made the statement under physical and psychological pressure and that no lawyer was present during the interrogations. This fact was confirmed by his lawyer, who indicated that the author did not give any testimonies about Chechnya in her presence. Asked about the signature on the interrogation report, the lawyer declared that it was similar to hers, but maintained that Mr. Gunan had never testified about Chechnya in her presence. Nevertheless, the court considered his allegations of ill-treatment and forced confession as groundless, not supported by materials on file and concluded that these claims were made in order to avoid criminal responsibility.

2.8 The author appealed his sentence to the Osh Regional Court. On 3 August 2000, the Appeal College on Criminal Cases of the Osh Regional Court reversed the decision of the first instance court and referred the case back to the Osh City Court for re-examination. The decision was reversed on the following grounds: (1) incomplete evaluation by the first instance court of the factual circumstances of the case and of the collected evidence; (2)

[3] The author also accuses the investigator T. of an attempt on his life. On 12 or 13 April 2000, the car transporting him and the other co-accused to prison after a court hearing collided with a police car and flipped over twice. Mr. Gunan was severely wounded.

[4] Under article 97, paragraph 2, of the Criminal Code, this crime was punishable by 12 to 20 years of imprisonment or death penalty.

complete lack of evidence regarding the author's and other co-accused's membership in the "Ozadlyk Sharki Turkestan" (Free Eastern Turkestan) criminal organization or its mere existence; (3) author's interrogation in the absence of a lawyer; lack of investigation into the author's allegations of ill-treatment and self-incriminating statement extracted by physical and psychological pressure; the failure of the prosecutor to adduce any concrete evidence refuting the author's (and his co-accused's) arguments. On 9 January 2001, following the objection submitted by the Prosecution's Office[5], the Supreme Court reversed the decisions of the Osh City and Regional Courts[6] and the case was once again referred back to the Osh City Court for re-examination.

2.9 On 12 March 2001, the Osh City Court, in closed session, sentenced the author to death. The court found a link between the May 1998 explosions in Osh, Kyrgyzstan, and the seizure of explosives in Kazakhstan on 12 July 1998, and based its decision on the following grounds: (1) the participation of the author and his co-accused in a military training camp in Chechnya[7] and their alleged membership in the criminal organization "Ozadlyk Sharki Turkestan" (Free Eastern Turkestan)[8]; (2) the alleged similarity between the improvised explosive devices (IED) found during the search of the car in Kazakhstan and those used during the explosions in Osh, although two forensic examinations found similarities, but also differences between those devices; (3) the seizure from the apartment rented by one of the co-accused in Almaty of certain materials containing information on methods of manufacturing explosive devices, although it was established that those materials did not belong to the author; (4) the existence of a map of Kyrgyzstan with the Osh city marked as a target, which the author claims was fabricated[9]. The court stated that the author's guilt and that of the other co-accused was established by victims' testimonies and witness statements. However, according to the author, none of the victims or witnesses declared that they knew or had ever seen him either at the crime scene or in Osh city. The description given by the witnesses of the person seen in the minibus (who left the bag with explosives on 30 May 1998, *see* para. 2.2) did not match that of the author and of the other co-accused[10]. The court did not address these inconsistencies and concluded that the

[5] The prosecutor referred to the author's and other co-accused's claims of ill-treatment and self-incrimination statements made under physical and psychological pressure, stating that these claims were groundless and were made with the purpose to avoid criminal responsibility. He requested the Supreme Court to reverse the decision of both the Osh City Court and the Osh Regional Court.

[6] The court accepted the prosecutor's arguments that the penalty imposed by the first instance court was too light and that the reversal decision of the Osh Regional Court was groundless. It concluded that the guilt of the author and his co-accused was corroborated by evidence.

[7] See para. 2.7 *supra*.

[8] The court concluded that all the accused were members of this criminal organization without providing any evidence as to its existence or the membership of the author and his co-accused (this shortcoming was identified earlier on by the Osh Regional Court which reversed the decision of the first instance court, *see* para. 2.8).

[9] According to the author, the map of Kyrgyzstan with the Osh city marked as a target was fabricated, because its origin is unknown. He maintains that the map was fabricated at the time of his extradition to Kyrgyzstan and was subsequently attached to his case file.

[10] According to the documents available on file, the main witness declared that he did not know the author. However, he identified Mr. B.A (one of the co-accused) as being the person who presumably left the bag with explosives in the minibus on 30 May 1998, but he was not completely sure, stating that there were certain similarities between Mr. B.A. and that person (the nose and the eyes). The testimony of the main witness was in contradiction with the testimony of another witness who stated that the person who left the bag was red-haired and had bright eyes (she did not identify any of the accused during the photo identification; in addition, she also stated in court that after the blasts she had seen on an Uzbek TV channel a person resembling very much the man who left the bag in the minibus). According to the author, none of the accused was red-haired or had bright eyes, both

criminal organization "Ozadlyk Sharki Turkestan" (Free Eastern Turkestan), with the help of an unidentified person, placed an IED in a minibus in Osh city on 21 May 1998; having information that the bomb did not explode, the same criminal organization placed a second bomb in a minibus on 30 May 1998 with the assistance of Mr. B.A[11]. The author claims that the court sentence was based solely on unfounded assumptions and was influenced by public opinion and the political situation in the country.

2.10 The sentence was upheld by the Appeal College on Criminal Cases of the Osh Regional Court on 18 May 2001. The author submitted an application for supervisory review to the Supreme Court on 15 June 2001[12]. On 18 September 2001, the Supreme Court upheld the decisions of the previous courts and rejected the author's application.

2.11 The author claims that he has exhausted all available domestic remedies and that the same matter has not been examined under another procedure of international investigation or settlement.

The complaint

3.1 The author submits that his rights under article 6 have been violated, as he was sentenced to the death penalty after an unfair trial.

3.2 He claims that he is innocent and thus his arrest and detention amounts to a violation of his right to liberty and security under article 9 of the Covenant.

Mr. B.A. and himself have dark hair and dark eyes. Mr. B.A. pleaded not guilty throughout the proceedings (as well as the other co-accused) and denied that he knew Mr. Gunan. The court did not address these contradictions, and concluded that the criminal organization "Ozadlyk Sharki Turkestan" (Free Eastern Turkestan), with the help of an unidentified person, placed a bag with an IED in a minibus in Osh city on 21 May 1998 (which exploded on 1 June 1998 in the watchman's kitchen, see para. 2.1 *supra*). The court finally concluded that the same criminal organization, with the help of Mr. B.A., placed a second bomb in the minibus in Osh on 30 May 1998 (although none of the witnesses testified against the author or other co-accused in relation to the first or the second episode, excepting the uncertain and contradictory testimonies related to the alleged involvement of Mr. B.A.).

[11] See footnote 10 *supra*.

[12] The author indicated, inter alia, that: (a) he is innocent and not responsible for the explosions produced in Osh; (b) he had never been in Kyrgyzstan before, his Turkish passport contained no border crossing stamp; (c) he did not set up or operate any criminal organization and maintained that no evidence was adduced to corroborate the existence of such an organization or prove his and the other convicts' membership; (d) he was not provided with legal assistance and interpreter at all stages of the criminal investigation; (e) he was refused copies of the applications lodged by the Osh Regional Prosecutor and the General Prosecutor of the Kyrgyz Republic and thus he was denied the opportunity to present written objections to the Supreme Court; (f) he had never been in Chechnya and he made this statement after being subjected to physical and psychological pressure by the investigator and police officers; (g) the map of Kyrgyzstan with the Osh city marked as a target was fabricated at the time of his extradition, because it did not appear in any report concerning the seizure of evidence by Kazakh authorities either from the car or during the search of the apartment in Almaty; (h) the courts based their decisions solely on the alleged similarity between the improvised explosive devices (IED) found in the car in Kazakhstan and those used during the explosions in Kyrgyzstan, although a forensic expert examination concluded that the explosive agent used in Osh was different from the explosive agent present in the IED confiscated during the car search in Kazakhstan, and that none of the bomb recipes described in the manuscript corresponded to the composition of the exploded IEDs in Osh; (i) although the handwriting expert examination concluded that the manuscript with bomb recipes seized from the apartment in Almaty did not match his handwriting, the court judgment stated the contrary.

3.3 The author also claims a violation of his rights under articles 7, 14, paragraph 3 (g), and 10, paragraph 1, as he was subjected to torture and was compelled to sign self-incriminating statements. The courts and the prosecutor failed to carry out an investigation into his allegations of ill-treatment, and rejected his claims as groundless.

3.4 He submits that his rights under article 14, paragraph 1, have been violated, since he was denied a fair trial in the determination of the criminal charges against him. The author claims that the consideration of his case by Kyrgyz courts was partial, and that the courts were biased and subjected to political influence. The courts failed to establish a link between the seizure of explosives in Kazakhstan and the explosions in Kyrgyzstan and based their decisions exclusively on unfounded assumptions. They did not establish his motivation for the organization of terrorist acts in Kyrgyzstan, nor prove his membership in a criminal organization or its mere existence. The evaluation of facts and evidence of the case was flawed and arbitrary, and inconsistencies in the witness testimonies remained unaddressed. His guilt was not supported by any reliable evidence and thus he was wrongfully convicted. The author claims that under article 16 of the Kyrgyz Criminal Procedure Code, any doubts which cannot be resolved during court proceedings shall be interpreted in favor of the accused.

3.5 The author claims that he was not informed about his rights at the time of the arrest and was not provided with legal assistance from the moment of his arrest. He was extradited to Kyrgyzstan on 14 May 1999 and was intensely interrogated in the absence of a lawyer and subjected to torture by police and investigative officers. A lawyer was assigned to him only on 30 July 1999, after he had already made self-incriminating statements under pressure. The author also claims that at different stages of the judicial proceedings he had difficulties in consulting the materials contained in the file, most of which were not translated into Turkish (e.g. trial transcripts). He did not speak Russian and Kyrgyz and therefore was not able to check whether the trial transcripts and other court documents reflected correctly his statements and witnesses' testimonies. His lawyer was refused copies of the applications lodged by the Osh Regional Prosecutor and the General Prosecutor of the Kyrgyz Republic and thus he was denied the opportunity to present written objections to the Supreme Court. The author maintains that the above facts amount to a violation of his rights under article 14, paragraph 3 (b) and (d) of the Covenant.

3.6 Finally, the author claims a violation of article 2, paragraph 3, of the Covenant, as he did not have access to an effective remedy.

State party's failure to cooperate

4. The State party was invited to present its observations on the admissibility and/or the merits of the communication in February 2007, and reminders were sent in this respect on 28 April 2008, 1 October 2009, 1 September 2010, and 4 February 2011. The Committee notes that this information has still not been received. The Committee regrets the State party's failure to provide any information with regard to the admissibility or the substance of the authors' claims. It recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol, that States parties examine in good faith all the allegations brought against them and submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have given[13]. In the absence of a reply from the

[13] See, communication No.1522/2006, *N.T.* v. *Kyrgyzstan*, inadmissibility decision adopted on 19 March 2010, para. 4; communication No. 1461, 1462, 1476&1477/2006, *Zhakhongir Maksudov and Adil Rakhimov, Yakub Tashbaev and Rasuldzhon Pirmatov* v. *Kyrgyzstan*, Views adopted on 16 July 2008, para. 9.

State party, due weight must be given to the author's allegations, to the extent that these have been properly substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with article 93, of its Rules of Procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

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

5.3 Concerning the requirement of exhaustion of domestic remedies, the Committee has noted that according to the information submitted by the author, he brought his claims to the attention of the authorities who dealt with the criminal case. In the absence of any objection by the State party, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have also been met.

5.4 In the Committee's view, the author has sufficiently substantiated, for purposes of admissibility, the claims under articles 2, paragraph 3; 6; 7; 9; 10, paragraph 1; 14, paragraph 1; 14, paragraph 3 (b), (d) and (g), of the Covenant. Consequently, the Committee considers the communication admissible and proceeds to its examination on the merits.

Consideration of merits

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

6.2 The Committee notes the author's claim that he was tortured by the police and investigative officers during his interrogation, and was compelled to sign self-incriminating statements, *inter alia* that he had participated in a military training camp in Chechnya, in the absence of a lawyer. The author provides detailed information regarding his torture. He claims that he was initially refused access to SIZO No. 1 in view of his bad physical condition and that he retracted his statement made under physical and psychological pressure at the time of the first instance court hearings. Eventually, his complaint was ignored by the prosecution and the courts. In this regard, 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[14]. Although the author's allegations of torture and forced confession are mentioned in the decisions of all courts that considered his criminal case, these claims were ultimately rejected as being groundless, not supported by materials on file and made in order to avoid criminal responsibility. There is no indication in the decisions that the claims were investigated. The Committee therefore considers that the State party's competent authorities have failed to give due and adequate consideration to the author's complaints of torture made during the domestic criminal proceedings. In these circumstances, and in the absence of any observations on the author's specific claims by the State party, the Committee concludes that the facts before it disclose a violation of

[14] See, e.g., Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of torture and cruel treatment or punishment), 1992 (HRI/GEN/1/Rev.8), para. 14.

Mr. Gunan's rights under articles 7 and 14, paragraph 3 (g), of the Covenant[15]. In the light of this conclusion, the Committee will not examine separately the author's claim under article 10, paragraph 1, of the Covenant.

6.3 The author claims that he was extradited to Kyrgyzstan on 14 May 1999 and was not granted legal assistance until 30 July 1999. Upon arrest, he was interrogated on several occasions in the absence of a lawyer. Moreover, the defence was refused copies of the Prosecutor's Office applications to the Supreme Court and thus the author was deprived of the right to raise any objections in relation to those submissions. The Committee notes that these allegations are confirmed by the materials submitted to it by the author. In this respect, it recalls that the Osh Regional Court on 3 August 2000 reversed the decision of the first instance court *inter alia* on grounds that the author's interrogation was conducted in the absence of a lawyer (see para. 2.8 *supra*). In the absence of any information by the State party to refute the author's specific allegations, and in the absence of any other pertinent information on file, the Committee considers that due weight must be given to the author's allegations. Accordingly, it concludes that the facts before it reveal a violation of Mr. Gunan's rights under article 14, paragraph 3(b) and (d), of the Covenant.

6.4 The Committee takes note of the author's claim that his rights under article 14, paragraph 1, have been violated as the courts, *inter alia*, failed to properly assess the inconsistencies in the witness testimonies and to establish a link between the seizure of explosives in Kazakhstan and the explosions in Kyrgyzstan. In this regard, the Committee recalls its jurisprudence that it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence was manifestly arbitrary or amounted to a denial of justice. In the present case, from the uncontested information before the Committee, it transpires that the evaluation of evidence against the author by national courts reflected their failure to comply with the guarantees of a fair trial under article 14, paragraphs 3(b), 3(d) and 3(g), of the Covenant. Accordingly, the Committee is of the view that the author's trial suffered from irregularities which, taken as a whole, amount to a violation of article 14, paragraph 1, of the Covenant[16].

6.5 The author finally claims a violation of his right to life under article 6 of the Covenant, as he was sentenced to death after an unfair trial. In this regard, the Committee reiterates its jurisprudence that the imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 of the Covenant have not been respected, constitutes a violation of article 6 of the Covenant[17]. In light of the Committee's findings of a violation of article 14, it concludes that the author is also a victim of a violation of his rights under article 6, paragraph 2, read in conjunction with article 14, of the Covenant.

[15] See, for example, Human Rights Committee General Comment No. 32: Right to equality before courts and tribunals and to a fair trial (article 14), U.N. Doc. CCPR/C/GC/32 (2007), para. 60; communication No. 1401/2005, *Kirpo* v. *Tajikistan*, Views adopted on 27 October 2009, para. 6.3;

[16] See, e.g., communication No. 1519/2006, *Khostikoev* v. *Tajikistan*, Views adopted on 22 October 2009, para. 7.3.

[17] See Human Rights Committee General Comment No. 32: Right to equality before courts and tribunals and to a fair trial (article 14), U.N. Doc. CCPR/C/GC/32 (2007), para. 59; communication No. 719/1996, *Conroy Levy* v. *Jamaica*, Views adopted on 3 November 1998, para. 7.3; communication No. 730/1996, *Clarence Marshall* v. *Jamaica*, Views adopted on 3 November 1998, para. 6.6; communication No. 1096/2002, *Kurbanov* v. *Tajikistan*, Views adopted on 6 November 2003, para. 7.7; communication No. 1044/2002, *Shakurova* v. *Tajikistan*, Views adopted on 17 March 2006, para. 8.6; communication No. 1304/2004, *Khoroshenko* v. *Russian Federation*, Views adopted on 29 March 2011, para. 9.11;

6.6 Having reached the above conclusions, the Committee will not examine separately the author's claims under article 2, paragraph 3, and article 9, of the Covenant.

7. 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 State party has violated article 6, read together with article 14; article 7 and 14, paragraph 3 (g); article 14, paragraphs 1 and 3 (b), (d), of the International Covenant on Civil and Political Rights.

8. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee considers that the State party is under an obligation to provide the author with an effective remedy, including: carrying out an impartial, effective and thorough investigation into the allegations of torture and ill-treatment and initiating criminal proceedings against those responsible for the treatment to which the author was subjected; considering his retrial in conformity with all guarantees enshrined in the Covenant or his release; and providing the author with full reparation, including appropriate compensation. The State party is also under an obligation to take steps to prevent similar violations occurring in the future.

9. Bearing in mind that, 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 and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its 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.]

Appendix

Individual opinion by Committee member, Mr. Rafael Rivas Posada (partially dissenting)

The Human Rights Committee considered Communication No. 1545/2007 on 25 July 2011 and, in paragraph 7 of its Views, concluded that the State party had violated article 6, read together with article 14; articles 7 and 14, paragraph 3 (g); and article 14, paragraphs 1 and 3 (b) and (d), of the International Covenant on Civil and Political Rights.

I am in agreement with regard to the violation of article 14, paragraphs 1 and 3 (b), (d) and (g) of the Covenant, as the information provided by the author leaves no room for doubt in that respect. I disagree, however, with the conclusion that there was a direct violation of article 6, since the author was not deprived of his life. According to my interpretation of paragraph 1 of the aforementioned article, which upholds the right to life, it is not appropriate to conclude that there was a direct violation of the article if the author is still alive. It is true that in several of its Views and in its general comment No. 32, paragraph 59, the Committee considers that if the guarantees of due process enshrined in article 14 of the Covenant have been violated and a death sentence has been imposed, this constitutes a violation of article 6. I do not share this conclusion, however, as in my view it does not respect the precise formulation of paragraph 1, which establishes that "no one shall be arbitrarily deprived of his life" and which therefore is not applicable in cases where no deprivation of life has taken place.

The Committee should have concluded its consideration of the communication by finding a violation of article 6, paragraph 2, which refers specifically to the need to respect the laws in force at the time of the commission of the crime; that is to say, the rights enshrined in article 14 must not be violated. In my opinion, the correct formulation would have been "is of the view that the State party has violated article 6, paragraph 2, read together with article 14; articles 7 and 14, paragraph 3 (g); and article 14, paragraphs 1 and 3 (b) and (d), of the International Covenant on Civil and Political Rights". An alternative formulation, which would also be correct and which the Committee has used on other occasions, would be to say that there has been a violation of article 14, read together with article 6.

The Committee was inconsistent with the statement that it made in paragraph 6.5 of the Views, which reads as follows: "In light of the Committee's findings of a violation of article 14, it concludes that the author is also a victim of a violation of his rights under *article 6, paragraph 2*, (emphasis added) read in conjunction with article 14, of the Covenant."

[*Signed*] Rafael **Rivas Posada**

[Done in English, French and Spanish, 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.]

Individual opinion by Committee members, Mr. Yuji Iwasawa and Mr. Cornelis Flinterman

In the absence of a reply from the State party, the Committee gives due weight to the author's allegations and finds a violation of his rights under article 14, paragraph 3(b) and (d) of the Covenant (para. 6.3). This opinion expands upon the reasoning of the finding. Article 14, paragraph 3 provides that everyone shall be entitled "(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing" and "(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing…." There was a violation of these provisions, because the author was extradited on 14 May 1999 and was not granted legal assistance until 30 July 1999, and the defence was refused copies of the Prosecutor's Office applications to the Supreme Court and he was deprived of the right to raise any objections in relation to those submissions. Article 14 guarantees the right of everyone to "communicate with counsel" and requires that "the accused is granted prompt access to counsel" (General Comment No. 32, para. 34).

[*Signed*]: Yuji Iwasawa

[*Signed*] Cornelis Flinterman

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Individual opinion by Committee members, Mr. Rajsoomer Lallah and Mr. Fabían Omar Salvioli

We disagree with the view that the Human Rights Committee must wait for a person to be deprived of his life before the Committee can legitimately find that the person`s inherent right to life, as prescribed under Article 6 of the Covenant, has not been protected.

It stands to reason and common sense that, once life is taken away by an act of a State party, whether legislative or judicial or executive, the person whose life has been extinguished cannot physically or otherwise complain of anything, still less, remain capable of having recourse to Article 2 of the Optional Protocol to bring a communication before the Committee. The consequences of death are fundamental and irreversible. Surely, the reasoning of the Committee has always been that the duty undertaken by a State party is -

- to ensure and protect, under Article 2 of the Covenant, a person`s inherent right to life as prescribed under Article 6 of the Covenant, and
- to ensure, in this regard, that this inherent right is protected by law. I would, with confidence, interpret the express provisions of the first, second and third sentences of Article 6 (1) as requiring a State party to ensure that this inherent right is effectively protected and to secure that protection not only by the existence of a law in fact but also in the application of that law.

It is no doubt for the above reasons that the Committee has, for example in appropriate cases of a threatened extradition by an abolitionist State to another State where the sanction for the extraditable offence is the death penalty (without seeking assurances that the death penalty would not be applied), considered the inherent right to life, given the irreversible character of a violation of that right, to comprise protection from demonstrable risks to that inherent right. *A fortiori*, it seems to us that the non–observance by any judicial authority of the basic guarantees of a fair trial which results in the imposition of the death penalty is a violation of the inherent right to life of an accused.

For the reasons explained above, the appropriate decision of the Committee, in accordance with its established jurisprudence, should have been that there has been a separate violation of Article 6 proper.

[*Signed*] Rajsoomer Lallah

[*Signed*] Fabían Omar Salvioli

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