



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-ninth session
12 – 30 March 2007

VIEWS

Communications Nos. 1108/2002 and 1121/2002

<u>Submitted by:</u>	Mr. Makhmadim Karimov and Mr. Amon Nursatov (not represented by counsel)
<u>Alleged victims:</u>	Aidamir Karimov (Makhmadim Karimov's son), Saidabror Askarov, Abdumadzhid Davlatov and Nazar Davlatov (Nursatov's brother and cousins respectively).
<u>State party:</u>	Tajikistan
<u>Date of communications:</u>	16 August and 24 September 2002, respectively (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decisions, transmitted to the State party on 19 August (Karimov) and 25 September 2002 (Askarov/Davlatovs), not issued in document form
<u>Date of adoption of Views:</u>	27 March 2007

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of death sentence after unfair trial and absence of legal representation in capital case.

Substantive issue: Torture; Unfair trial; Right to life; conditions of detention

Procedural issues: Evaluation of facts and evidence; substantiation of claim

Articles of the Covenant: 6; 7; 9, 10; 14

Article of the Optional Protocol: 2

On 27 March 2007 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 communications Nos. 1108/2002 and 1121/2002.

[ANNEX]

ANNEX

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4,
OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS
Eighty-ninth session

concerning

Communications Nos. 1108/2002 and 1121/2002**

<u>Submitted by:</u>	Mr. Makhmadim Karimov and Mr. Amon Nursatov (not represented by counsel)
<u>Alleged victims:</u>	Aidamir Karimov (Makhmadim Karimov's son), Saidabror Askarov, Abdumadzhid Davlatov and Nazar Davlatov (Nursatov's brother and cousins respectively).
<u>State party:</u>	Tajikistan
<u>Date of communications:</u>	16 August and 24 September 2002, respectively (initial submission)

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

Meeting on 27 March 2007,

Having concluded its consideration of communications Nos. 1108/2002 and 1121/2002, submitted to the Human Rights Committee on behalf of Mr. Aidamir Karimov, Mr. Saidabror Askarov, Mr. Abdumadzhid Davlatov and Mr. Nazar Davlatov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

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

1.1 The first author is Makhmadim Karimov, a Tajik national born in 1950, who submits the communication on behalf of his son, Aidamir Karimov, also Tajik national born in 1975. The second author is Mr. Amon Nursatov, a Tajik national born in 1958, who submits the communication on behalf of his brother Saidabrор Askarov¹, and his cousins Abdumadzhid Davlatov and Nazar Davlatov, both Tajiks born in 1975. At the time of submission of the communications, all four victims were awaiting execution, after being sentenced to death by the Military Chamber of the Supreme Court on 27 March 2002. The authors claim violations by Tajikistan of the alleged victims' rights under article 6, paragraphs 1 and 2; article 7; article 9, paragraphs 1 and 2; article 10; and article 14, paragraphs 1, and 3, (e) and (g), of the Covenant². The second author invokes in addition violations of article 14, paragraph 3 (b) and (d) in relation to his brother Askarov; the communication appears to raise similar issues also in relation to Aidamir Karimov. They are unrepresented.

1.2 Pursuant to article 92 of its rules of procedures, when registering the communications, the Committee, acting through its Special Rapporteur of New Communications and Interim Measures, on 19 August (Karimov) and 25 September 2002 (Askarov/Davlatovs) respectively, requested the State party not to carry out the alleged victims' executions while their cases are under examination by the Committee. Later, the State party explained that all the death sentences of the alleged victims were commuted to 25 years' imprisonment.

The facts as submitted by the authors

2.1 On 11 April 2001, at around 8 a.m., the First-Deputy Minister of Internal Affairs of Tajikistan, Khabib Sanginov, was shot dead in his car near his house in Dushanbe. Two bodyguards and the car driver also died in the ambush. Seven individuals were arrested during 2001 as suspects in the murders, including the alleged victims.

The case of Aidamir Karimov

2.2 On an unspecified date in early June 2001, Aidamir Karimov was arrested in Moscow on charges of terrorism, pursuant an arrest warrant issued by the Tajik Prosecutor's Office that was transmitted to the Russian authorities. He was remitted to the Tajik authorities and arrived in Dushanbe allegedly on 14 June 2001, but his relatives were informed of this only five days after his arrival.

2.3 He was detained for two weeks on premises of Dushanbe's Internal Affairs' Department. The author claims that the building is not adapted for prolonged detentions, and the maximum allowed period for detention there is three hours. His son was transferred to a Temporary Detention Centre only two weeks later (exact date not specified) and kept there for two months, instead of the statutorily maximum authorised 10 days. Afterwards, he was transferred to the Investigation Detention Centre No 1 in Dushanbe, but was systematically brought to the Internal Affairs' Department and subjected to long interrogations there that went on all day and often

¹ Both the author and the State party use two names in relation to Mr. Nursatov's brother: Saidabrор Askarov and Said Rezvonzod.

² The Optional Protocol entered into force for the State party on 4 April 1999.

continued into the night. The food was insufficient and the parcels his family transmitted to the authorities did not reach him.

2.4 On 11 September 2001, the author's son was officially charged with premeditated murder under aggravating circumstances, accomplished with a particular violence, with use of explosives, acting in an organised group, theft of fire arms and explosives, illegal acquisition of fire arms and explosives, and deliberate deterioration of property.

2.5 During the preliminary investigation, the author's son was allegedly subjected to torture to force him to confess guilt. He was beaten, kicked in the kidneys, and beaten with batons. Allegedly, he received electroshocks with the use of a special electric device: electric cables were attached to different parts of his body (they were placed in his mouth and attached to his teeth, as well as to his genitals). According to the author, one of his son's torturers was I.R., deputy head of the Criminal Search Department of Dushanbe. His son was also threatened that if he did not confess guilt, his parents would also be arrested. These threats were taken seriously by his son, because he was aware that his two brothers and his father had already been arrested on 27 April and released on 28 May 2001. In these circumstances, he confessed and signed the confession (exact date not provided).

2.6 The author affirms that no relatives could see his son during the initial two months after arrest. His family met with him only once during the preliminary investigation, in the investigators' presence.

2.7 According to the author, the investigators had planned an investigation act – a verification of his son's confession at the crime scene – in advance. Two days before the actual verification, his son was brought to the crime scene where he was explained where to stand, what to say, and was shown to the individuals who later identified him during an identification parade. The reconstruction at the crime scene allegedly took place in the presence of 24 investigators, and his son was obliged to repeat what he had been previously instructed to say.

2.8 The author affirms that his son was given a lawyer by the investigators towards the beginning of the preliminary investigation, but the lawyer "acted passively" and was often absent. For this reason, two months after the beginning of the preliminary investigation, the author hired privately a lawyer to represent his son. His son allegedly immediately retracted his confessions and affirmed that they had been extracted under torture. The investigators allegedly refused to video tape his retraction and wrote a short note for the record.

2.9 The preliminary investigation ended on 15 November 2001. The case was examined by the Military College of the Supreme Court³ from 8 January to 27 March 2002. On 27 March 2002, all alleged victims were sentenced to death. The author claims that his son's trial was not fair and that the court was partial. In substantiation, he affirms that:

- (a) The court refused to order the removal of the handcuffs of the accused, thus preventing them from taking notes, although they were all sitting inside a metal cage in the court room. The alleged victims' presumption of innocence was violated because the chief

³ The author explains that the case was adjudicated by the Military Chamber because one of the accused was a member of the military forces.

of security, General Saidamorov, stated in court that it was impossible to remove handcuffs as the accused were “dangerous criminals” and could escape.

(b) At the end of the preliminary investigation, the author’s son’s indictment contained only three charges against him. At the beginning of the trial, the judge read out two new counts against him; this constitutes, according to the author, a violation of his son’s right to be promptly informed of charges against him;

(c) The author’s son retracted his confessions in court and claimed to be innocent. He affirmed that when the crime was committed, he was not in Dushanbe. This was confirmed by 15 witnesses, who testified that from 7 to 22 April he was in the Panch Region. These testimonies were allegedly ignored.

(d) Several witnesses against Karimov made contradictory depositions.

(e) The prosecution exercised pressure on the witnesses, limited the lawyers’ possibility to ask questions, and interrupted the lawyers and witnesses allegedly in an aggressive manner.

(f) The court did not objectively examine the circumstances of the crime – the nature of the crime committed or the existence of a causal link between the acts and their consequences.

(g) Allegedly no witness could identify the co-accused in court as participants in the crime.

(h) According to the author, the conviction itself does not comply with the requirement of proportionality between crime and punishment, as those who were found to be the organisers of the crime received lighter sentences (15 to 25 years’ of imprisonment) than those who were found to be the executors and who were sentenced to death.

2.10 On 29 April 2002, the Supreme Court confirmed on appeal the judgment of 27 March 2002. On 27 June 2002, the Supreme Court refused a request for a supervisory review⁴.

The case of Saidabror Askarov, and Abdumadzhid and Nazar Davlatovs

2.11 The second author, Mr. Nursatov, affirms that following the murder of Sanginov, several suspects were arrested, including his brother, Saidabror Askarov and the Davlatov brothers, as well as Karimov.

2.12 The author claims that after Askarov’s arrest (exact date not provided), the latter was held in a building of the Ministry of Internal Affairs for a week. The author affirms that the Ministry’s premises are inadequate for a long detention. On 4 May 2001, his brother was transferred to a Temporary Detention Centre where, instead of the statutorily authorised period, he was kept until

⁴ The supervisory review procedures empower the President of the Supreme Court or the Prosecutor General (or their deputies) to introduce (or not) a motion to the Court with a request for the reexamination of a case (on issues of law and procedure only).

24 May 2001, and then he was transferred to the Investigation Detention Centre No 1. During the initial month of detention, Askarov was interrogated at the Ministry of Internal Affairs' building all day long and often interrogatories continued into the night. An official record of his arrest was allegedly produced only on 4 May 2001 and he was placed in custody by a decision the same day. Abdulmadzhid and Nazar Davlatovs were sent to the Temporary Detention Centre on 5 May, and transferred to the Investigation Centre No.1 on 24 May 2001.

2.13 The author claims that during the first three days of detention, Askarov and the Davlatov brothers were not given any food but received only limited quantities of water. The food provided to the detainees was insufficient and the parcels the family sent to the authorities did not reach the detainees.

2.14 According to the author, his brother Askarov was subjected to beatings and torture to force him to confess guilt. He allegedly received electric shocks with a special device, and electric cables were introduced into his mouth and anus or were attached to his teeth or genitals. One of his fingers was broken⁵. In addition, he was placed under psychological pressure, because his brothers Amon (the author of the present communication) was also arrested together with their other brother, Khabib, on 27 April, and detained until 29 May 2001, and their fourth brother, Sulaymon, was also arrested on 27 April and released two months later. Askarov was constantly reminded of his brothers' arrests. Because of this treatment, Askarov and Davlatovs signed confessions.

2.15 Allegedly, Askarov was only allowed to meet with relatives for ten minutes six months after arrest (exact date not provided), in investigators' presence. Nazar Davlatov met his relatives only at the beginning of the trial, whereas Abdumadzhid Davlatov saw his mother only six months after his arrest.

2.16 The author affirms that his brother was not informed of his right to be represented by a lawyer from the moment of arrest, nor of the right to have a lawyer designated free of charge in case of lack of financial means. On 23 June 2001, the investigators appointed a lawyer (Aliev) for him. After one month, the family privately retained a lawyer, Fayzullaev, because all attempts to meet with the investigation-appointed lawyer failed. The new lawyer was allegedly forced to withdraw by the investigators, because he complained to the Prosecutor General about the illegality of Askarov's charges. After that, they privately hired a third lawyer.

2.17 In court, Askarov and the Davlatov brothers retracted their confessions. They claimed innocence and affirmed that they were in Panch region from 9 to 14 April 2001. This was confirmed by five witnesses. The court concluded that the court depositions, including the allegations of torture, were made in order to escape criminal liability.

2.18 The author presents similar claims to those made on behalf of Karimov (paragraph 2.9, letters (e) to (h) above).

⁵ The author claims that one of the persons that tortured his brother was Rasulov, deputy chief of Dushanbe's Criminal Search Department. Every day he visited the Temporary Detention Centre to check whether there «were good news for him ». Receiving a negative reply, he beat Askarov.

2.19 The judgment against Askarov and the Davlatov brothers was confirmed, on 29 April 2002, by the Supreme Court's Criminal Chamber.

The complaint

Karimov's case

3.1 The author claims that in violation of articles 7 and 14, paragraph 3 (g), his son was beaten, tortured, and put under psychological pressure and thus forced to confess guilt.

3.2 His son's rights under article 9, paragraphs 1 and 2 were violated, because he was arrested unlawfully and was not charged for a long period of time after arrest.

3.3 He claims that in violation of article 10, the conditions of detention during the early stages of his son's arrest were inadequate. The food received was insufficient and the parcels sent by the family were not transmitted to him.

3.4 The author further claims that his son's rights under article 14, paragraph 1, were violated because the court was partial. His son's presumption of innocence was violated, contrary to article 14, paragraph 2, because of the statement of the high ranked policeman in court that the accused were "dangerous criminals". He adds that article 14, paragraph 3 (e), was violated as the testimonies of the witnesses on his son's behalf were rejected under the simple pretext that they were false.

3.5 Finally, it is claimed that Karimov's rights under article 6, paragraphs 1 and 2 were violated, as he was sentenced to death after an unfair trial which violated article 14, of the Covenant.

3.6 While the author does not invoke article 14, paragraph 3 (b) and (d) specifically, the communication appears to raise issues under these provisions in Karimov's respect.

Askarov and Davlatov brothers' case

3.7 Mr. Nursatov claims a violation of article 7, and article 14, paragraph 3 (g), as his brother Askarov and his cousins Abdumadzhid and Nazar Davlatov were tortured and forced to confess guilt.

3.8 Article 9, paragraphs 1 and 2, were violated in their cases, because they were detained for long periods of time without being informed of their charges on arrest.

3.9 The author claims that his brother's and cousins' rights under article 10 of the Covenant were also violated as at the early stages of detention, they were kept at premises that were inadequate for long detention, they were given no food and only limited quantities of water, and the parcels their family prepared for them never reached them.

3.10 The author claims that the court was partial, in violation of article 14, paragraph 1. He adds that article 14, paragraph 2, was violated, because of the statement made by a senior security officer in court that the accused were "dangerous criminals".

3.11 According to the author, his brother's and cousins' right to a defence was violated, contrary to article 14, paragraph 3 (b) and (d).

3.12 Askarov and the Davlatov brothers allegedly are victims of a violation of article 14, paragraph 3 (e), because the testimonies of the witnesses on their behalf were rejected as "false".

3.13 Finally, the author claims that Askarov's and the Davlatov brothers' rights under article 6, paragraphs 1 and 2, were violated, because they were sentenced to death after a trial that did not meet the requirements of article 14.

State party's observations

Karimov's case

4.1 On 20 February 2003, the State party informed the Committee that pursuant a Ruling of the Presidium of the Supreme Court of 3 December 2002, Karimov's death sentence was commuted to a 25 years' prison term.

4.2 On 3 April 2006, the State party presented its observations on the merits. According to it, the Supreme Court examined the criminal case and recalled that the author's son was found guilty of a multitude of crimes, including murder, committed together with his co-accused Revzonzod (Askarov), the Davlatovs, Mirzoev and Yormakhmadov, and was sentenced to death on 27 March 2000.

4.3 The murder victim was an opposition leader and a member of the National Reconciliation Commission created in 1997. After the work of the Commission resumed in June 1999, he was appointed as First Deputy Minister of Internal Affairs. In this function he took a number of steps for the demilitarisation of armed opposition groups. He thus became a target of assassination attempts.

4.4 According to the Court, Karimov and the other co-accused were found guilty of murder, theft of fire arms and ammunitions, acting in an organised group, robbery, intentional deterioration of property, and illegal acquisition, storing, and carrying of fire arms and ammunition. Their guilt was established not only by their confessions made during the preliminary investigation, but also confirmed by the testimonies of many witnesses; as well as the records of several identification parades, face-to-face confrontations, records of the reconstruction of the crime scene; and the verification of depositions at the crime scene; seized fire arms, ammunition (bullets), conclusions of several medical-forensic and criminal experts, as well as other evidence collected. Karimov's acts were qualified correctly under the law, and his punishment was proportionate to the gravity and the consequences of the acts committed.

4.5 According to the court, the author's allegations that his son did not take part in the crime but was obliged to confess guilt during the preliminary investigation and the court convicted him on the basis of untrue and doubtful evidence, were not confirmed and were refuted by the material contained in the case file.

4.6 According to the State party, the author's allegations that his son was beaten and was kept unlawfully under arrest for a long period to force him confess guilt were rejected and were not

corroborated by the circumstances and the material of the criminal case. The case file shows that Karimov left for the Russian Federation after the crime occurred. On 4 May 2001, the Tajik Prosecutor's Office charged him in absentia with terrorism, and an arrest warrant was issued against him. On this basis, he was arrested in Moscow on 14 June 2001. He was transferred to Dushanbe on 25 June 2001. The State party contends, without providing any documentary evidence, that Karimov was examined by a medical doctor upon arrival in Dushanbe, who concluded that his body did not reveal any bodily injuries as a result of ill-treatment. On 28 June 2001, in his lawyer's presence, Karimov described the crime events in detail at the crime scene, and on 30 June 2001, during a confrontation with his co-accused Mirzoev and again in their lawyers' presence, both co-accused reaffirmed that they had participated in the crime.

4.7 On 3 July 2001, Karimov was given a new lawyer and in his presence, during a reconstruction of the crime at the crime scene, he explained in detail how he had committed the crime.

4.8 The State party affirms, again without providing documentary evidence, that on 9 July 2001, Karimov was again examined by a medical expert, whose conclusions are contained in the case file, and which establish that Karimov's body did not show any marks of beatings and did not reveal any bodily injury.

The cases of Askarov and the Davlatov brothers

5. On 27 July 2004, the State party informed the Committee that after a Presidential Pardon, Askarov's and the Davlatovs' death sentences were commuted to long prison terms. Although several requests for submission of observations on the merits of the communication were addressed to the State party (on 10 March 2003, 20 September 2004, 17 November 2005, and 30 November 2006), no further information was received.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with Rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that the same matter is not being examined under any other international procedure, as required by article 5, paragraph 2 (a), of the Optional Protocol.

6.3 The authors claim that the alleged victims' rights under article 9, paragraphs 1 and 2, were violated, as they were arrested unlawfully and detained for a long period of time without being charged. In relation to Karimov, the State party affirms that following the opening of the criminal case in relation to the murder, and in light of the depositions of other co-defendants, he was charged with participation in the murder and a search warrant was issued against him. The State party has not commented on this issue in relation to Nurstov's brother and cousins. The Committee notes, however, that the material before it does not permit it to establish the exact date of their respective arrests, and it also remains unclear whether these allegations were ever brought up in the court. In these circumstances, the Committee considers that this part of the

communication is unsubstantiated, for purposes of admissibility, and therefore inadmissible under article 2, and article 5, paragraph 2 (b), of the Optional Protocol.

6.4 Both authors claim that in violation of article 14, paragraph 1, of the Covenant, the trial did not meet the requirements of fairness and that the court was biased, (paragraph 2. 9 and 2. 18 above). The State party has not commented on these allegations. The Committee observes, however, that all of these allegations relate primarily to the evaluation of facts and evidence by the court. It recalls that it is generally for the courts of States parties to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice⁶. However it falls under the Committee's competence to assess if the trial was conducted in accordance with article 14 of the Covenant. Nevertheless, in the present case, the Committee considers that the authors have failed to sufficiently substantiate their claims under this provision, and therefore this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The authors also claim that contrary to the requirements of article 14, paragraph 3 (e), the court heard the testimonies of witnesses on the alleged victims' behalf but simply ignored them. The State party has not made any observation in this relation. The Committee notes however, that the material available to it shows that the Court indeed evaluated the testimonies in question and concluded that they constituted a defence strategy. In addition, these allegations relate primarily to the evaluation of facts and evidence by the court. The Committee reiterates that it is generally for the courts of the States parties to evaluate facts and evidence, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice. In the absence of other pertinent information that would demonstrate that the evaluation of evidence indeed suffered from such deficiencies in the present case, the Committee considers this part of the communication to be inadmissible under article 2 of the Optional Protocol.

6.6 The Committee considers that the remaining part of Mr. Karimov's and Mr. Nursatov's allegations, raising issues under articles 6; 7 read together with article 14, paragraph 3 (g); article 14, paragraph 2; and article 10, in relation to all four alleged victims, as well as under article 14, paragraph 3 (b) and (d), in relation to Messrs Karimov and Askarov, are sufficiently substantiated, for purposes of admissibility, and declares them admissible.

Consideration of the merits

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

7.2 The authors claimed that the alleged victims were beaten and tortured by the investigators, so as to make them confess guilt. These allegations were presented both in court and in the context of the present communication. The State party has replied, in relation to the case of Mr. Karimov, that these allegations were not corroborated by the materials in the case file, and that the alleged victim was examined on two occasions by medical doctors who did not find marks of torture on his body. The State party makes no comment in relation to the torture allegations

⁶ See, inter alia, Communication No 541/1993, Errol Simms v. Jamaica, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

made on behalf of Mr. Askarov and the Davlatov brothers. In the absence of any other pertinent information from the State party, due weight must be given to the authors' allegations. 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 impartially⁷. In the present case, the authors have presented a sufficiently detailed description of the torture suffered by Messrs Karimov, Askarov, and the Davlatov brothers, and have identified some of the investigators responsible. The Committee considers that in the circumstances of the case, the State party has failed to demonstrate that its authorities adequately addressed the torture allegations put forward by the authors. In the circumstances, the Committee concludes that the facts as presented disclose a violation of article 7, read together with article 14, paragraph 3 (g), of the Covenant.

7.3 Both authors claim that the conditions of detention at the premises of the Ministry of Internal Affairs were inadequate having regard to the lengthy period of detention. They point out that the alleged victims were unlawfully detained during periods largely exceeding the statutorily authorised time limits for detention in premises of the Ministry of Internal Affairs, and in the Temporary Detention Centre. During this period, no parcels sent to the victims by their families were transmitted to them, and the food distributed in the detention facilities was insufficient. In addition, Mr. Askarov and the Davlatov brothers were denied food for the first three days of arrest. The State party has not commented on these allegations. In these circumstances, due weight must be given to the authors' allegations. The Committee considers therefore that the facts as submitted reveal a violation by the State party of Mr. Karimov's, Askarov's, and the Davlatov brothers' rights under article 10, of the Covenant.

7.4 Mr. Karimov and Mr. Nursatov claim that the alleged victims' presumption of innocence was violated, as in court they were placed in a metal cage and were handcuffed. A high ranked official publicly affirmed at the beginning of the trial that their handcuffs could not be removed because they were all dangerous criminals and could escape. The State party has not presented any observations to refute this part of the authors' claim. In the circumstances, due weight must be given to the authors' allegations. The Committee considers that the facts as presented reveal a violation of the alleged victims' rights under article 14, paragraph 2, of the Covenant.

7.5 Both authors invoke violations of article 14, paragraph 3 (b) and (d). The first author has claimed violations of Karimov's right to defence as although he was assigned a lawyer at the beginning of the preliminary investigation, this lawyer only occasionally attended the investigation hearings, to the point that a lawyer was hired privately to represent his son. Mr. Nursatov claims that his brother Askarov was not given a lawyer at the beginning of the investigation, although he risked the death sentence; when he was assigned an ex-officio lawyer, this lawyer was ineffective; and that the lawyer hired privately by his family was later forced to withdraw from the case. The State party has not refuted these allegations; in the circumstances the Committee concludes that they, since adequately substantiated, must be given due weight. The Committee recalls⁸ its jurisprudence that particularly in cases involving capital punishment, it is axiomatic that the accused is effectively assisted by a lawyer at all stages of the proceedings.

⁷ General Comment on article 7, No. 20 [44], adopted on 3 April 1992, paragraph 14.

⁸ See for example *Aliev v Ukraine*, Communication 781/1997, Views adopted on 7 August 2003, paragraph 7.2.

In the circumstances of the present case, the Committee concludes that Mr. Karimov's and Askarov's rights under article 14, paragraph 3 (b) and (d), were violated.

7.6 The Committee recalls that the imposition of a sentence of death upon conclusion of a trial that did not meet the requirements for a fair trial constitutes a violation of article 6 of the Covenant. In the present case, death sentences were imposed on all victims in violation of article 7 read together with article 14, paragraph 3 (g), as well as in violation of article 14, paragraph 2, of the Covenant. In addition, in relation to both Messrs Karimov and Askarov, the death sentence was imposed in violation of the fair trial guarantees set out in article 14, paragraph 3 (b) and (d), of the Covenant. Accordingly, the Committee concludes that the alleged victims' rights under article 6, paragraph 2, of the Covenant, have also been violated.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of Messrs Davlatovs' rights under articles 6, paragraph 2; article 7 and 14, paragraph 3 (g) read together; article 10; and article 14, paragraph 2; as well as Messrs Karimov's and Askarov's rights under article 6, paragraph 2; article 7 read together with article 14, paragraph 3 (g); article 10; and article 14, paragraphs 2 and 3 (b) and (d), of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Messrs Karimov, Askarov, and Abdumadzhid and Nazar Davlatovs with an effective remedy, including compensation. The State party is also under an obligation to prevent similar violations in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
