



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

Eighty-first session

5 – 30 July 2004

VIEWS

Communication No. 1117/2002

<u>Submitted by:</u>	Mrs. Saodat Khomidova (not represented by counsel)
<u>Alleged victim:</u>	Mr. Bakhrom Khomidov (author's son)
<u>State party:</u>	Tajikistan
<u>Date of initial communication:</u>	17 September 2002 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 86/91 decision, transmitted to the State party on 27 September 2002. (not issued in document form)
<u>Date of adoption of views:</u>	29 July 2004

On 29 July 2004, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1117/2002. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

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-first session

concerning

Communication 1117/2002**

Submitted by: Mrs. Saodat Khomidova (not represented by
counsel)

Alleged victim: Mr. Bakhrom Khomidov (author's son)

State party: Tajikistan

Date of initial communication: 17 September 2002 (initial submission)

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

Meeting on 29 July 2004,

Having concluded its consideration of communication No. 1117/2002, submitted to the Human Rights Committee on behalf of Mr. Bakhrom Khomidov, 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,

Adopts the following:

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

1.1 The author of the communication dated 17 September 2002 is Mrs. Saodat Khomidova, a Tajik national. She submits the communication on behalf of her son, Bakhrom Khomidov, a Tajik citizen born in 1968, at present detained on death row in Dushanbe, after being sentenced

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

to death by the Criminal Chamber of the Supreme Court on 12 September 2001. She claims that her son is a victim of violations by Tajikistan of articles 6, paragraphs 1 and 2; 7, 9, and 14, paragraphs 1, and 3 (b) and (g), of the International Covenant on Civil and Political Rights. The communication also appears to raise issues under article 14, paragraph 3 (e) of the Covenant, although this provision is not directly invoked. She is not represented by a counsel.

1.2 On 27 September 2002, the Human Rights Committee, acting through its Special Rapporteur on New Communications and Interim Measures requested the State party not to carry out the death sentence against Mr. Khomidov while his case was under consideration by the Committee. No reply was received from the State party in this respect¹.

Facts, as submitted by the author

2.1 In the night of 26 to 27 February 2000, the author's neighbours, Mr. and Mrs. Pirnozarov, were shot death at their domicile. On 25 May 2000, the author's son was arrested near his mother's house in Dushanbe, allegedly without explaining him the reasons for his arrest. The police are said to have been assisted by friends and relatives of Mr. and Mrs. Pirnozarov.

2.2 Mr. Khomidov's family was not informed of the arrest. His relatives unsuccessfully tried to locate him; they only learned that he was arrested by the police in relation to the murder ten days later. Mr. Khomidov allegedly was charged with murder one month after his arrest.

2.3 Allegedly, Mr. Khomidov was detained for four months in three different district police offices as police wanted to force him to confess guilt in several other crimes. The conditions of detention in these facilities allegedly were totally inadequate for long periods of detention. No relative was able to see him until his transfer to the investigation detention centre in October 2000. The visits took place always in the immediate presence of the investigators or personnel of the detention centre.

2.4 After the arrest, no lawyer was assigned to the author's son; he was not informed of his right to be represented by a lawyer. Only after two months was he provided with a lawyer chosen by the investigators. According to the author, this lawyer was incompetent and worked in the interest of the prosecution, without consulting the family on the progress of the investigation. The consultations between the lawyer and the author's son always took place in presence of the investigators.

2.5 The author contends that her son was tortured with electric shocks and was beaten throughout the investigation, forcing him to sign written confessions prepared by the investigators in advance; the majority of these confessions were signed in the absence of a

¹ The Committee became aware of the fact that the President of Tajikistan announced, on 30 April 2004, that a moratorium on the executions of death sentences would be introduced shortly; apparently no execution was carried out since this date. On 2 June 2004 the lower house of the Parliament adopted the law "on the suspension of the application of the death penalty", and on 8 July 2004 it was endorsed by the upper house of the Parliament. However, to have the law entered into force, it still has to be signed by the President.

lawyer. The author provides the names of the prosecution officials who she claims tortured her son. She claims that her son was beaten with batons, and parts of his body were electrocuted with a metal bar, causing head and ribs injuries. She also affirms that her son showed her his crooked fingers, a consequence of the torture used.

2.6 Mr. Khomidov was accused of being a member of a criminal gang, headed by one N. I. , specialized in robbery. The author's son was charged with ten acts of robbery and allegedly was the only member of the group to be prosecuted (five other suspected members of the gang were killed in a police action in May 2000); he was also charged with the assault of a driver and the hijacking of his car; he was further accused of illegal possession and storage of firearms and of participation in an attack against Governmental troops, and an attempt to blow up the house of a police inspector. Mr. Khomidov was put under psychological pressure also because the family of Mr. and Mrs. Pirnazarov, supported by the police, had set fire to his house and forced his wife and children to leave the premises, while the police illegally confiscated his car and the furniture of his house. His father's mill was destroyed and his animals were taken away; his father was beaten with a rifle butt. Mr. Khomidov allegedly was kept informed of these incidents by the police in order to put him under additional pressure.

2.7 The author further claims that much of the investigation proceedings were conducted in the lawyer's absence, thus making the evidence obtained illegal and inadmissible.

2.8 The Supreme Court judge, S. K., allegedly acted in an accusatory manner. Mr. Khomidov's lawyer's requests were denied, particularly when he asked to call supplementary witnesses, and when he requested that a medical expert examine him to clarify whether he had sustained injuries as a result of the torture he was subjected to. The only witness of the crime was the 5-year old daughter of the neighbours, and she was the only one who identified Mr. Khomidov as the culprit. According to the author, the child's testimony was the consequence of the police "preparation" she was subjected to. As to the episode related to the hijacking of a car, the author alleges that the eyewitnesses could not recognize her son during an identification parade and in court.

2.9 On 12 September 2001, the Supreme Court found Mr. Khomidov guilty of all the charges against him and sentenced him to death. According to the author, the death penalty was imposed on her son because the judge was afraid of eventual persecution against her by the victims' family. On 13 November 2001, on appeal, the Criminal College of the Supreme Court upheld the decision. On 3 October 2002, the President of Tajikistan refused to grant her son a pardon.

2.10 The author adds that according to her son, in August 2002, several investigators visited him on death row and asked him to confess guilt in other unsolved crimes dating back 4-5 years, including the killing of some Members of Parliament. He was apparently told that since he was sentenced to death, confessing to one or two more crimes would not change his situation.

2.11 On 26 January 2004, the author requested the Committee to reiterate its request for interim measures for protection, as she had received unofficial information that her son's execution had been scheduled for early February.

2.12 On 31 March 2004, she informed the Committee that she met her son on 27 March, and that she had found him in bad health and bad psychological condition. He was very nervous, shouted throughout the meeting, and stated that he could no longer live in such uncertainty and preferred to be executed. He allegedly threatened to commit suicide. According to her, he also had skin problems (permanent itch), a “tumor” in the thorax, and other health problems, but he received no medical assistance or examination.

2.13 The author reiterates that investigators requested her son to confess guilt in other crimes. She alleges that her son was beaten by investigators, as he displayed marks and his face was scratched. She filed no complaint with the authorities in this respect, as she was afraid that they would further harm her son or would execute him.

The claim

3.1 The author claims that her son’s rights under article 7 of the Covenant were violated, as he was beaten and subjected to torture in detention.

3.2 Article 9, paragraphs 1 and 2, are said to have been violated, as Mr. Khomidov was detained illegally, for a long period of time, without being informed of any of the charges against him.

3.3 Article 14, paragraph 1, of the Covenant is said to have been violated, as the court did not observe its obligation of impartiality and independence. In this context, the author’s claim that the judge, under pressure from the relatives of the murder victims, refused to order a medical examination to ascertain whether Mr. Khomidov’s injuries resulted from torture or to call witnesses on his behalf, while not specifically invoked, may raise issues under article 14, 3 (e), of the Covenant.

3.4 The author claims a violation of article 14, paragraphs 3 (b), as her son was not allowed sufficient time to prepare his defence, and because he was not offered sufficient time and conditions to meet with his lawyer.

3.5 Article 14, paragraph 3 (g), is said to have been violated as Mr. Khomidov was forced to testify against himself under duress.

3.6 Finally, the author claims that her son’s right to life under article 6, paragraphs 1 and 2, of the Covenant was violated, because he was sentenced to death after a trial in which the guarantees in article 14 of the Covenant were not met.

Issues and proceedings before the Committee

4. On 18 September 2002, 2 December 2003, 28 January 2004 and 14 April 2004, the State party was requested to submit to the Committee information on the admissibility and merits of the communication. 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 admissibility or the substance of the author’s claims. It recalls that it is implicit in the Optional

Protocol that States parties make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that these have been properly substantiated².

Committee's decision on admissibility

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

5.2 The Committee notes that the same matter is not being examined under any other international procedure and that domestic remedies have been exhausted. No challenge from the State party to this conclusion has been received. The requirements of article 5, paragraph 2 (a) and (b), of the Optional Protocol have thus been met.

5.3 The Committee considers that the author's claims have been sufficiently substantiated for purposes of admissibility, in that they appear to raise issues under articles 6, 7, 9 and 14, paragraphs 1 and 3, (b), (e) and (g), of the Covenant. It therefore proceeds to their examination on the merits.

Examination of the merits

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

6.2 The Committee has noted the author's detailed description of the acts of torture to which her son was subjected to make him confess guilt. She has identified by name several of the individuals alleged to have participated in the above events. In the circumstances, and in the absence of any explanations from the State party in this respect, due weight must be given to her allegations. As the author has provided detailed information of specific forms of physical and psychological torture inflicted upon her son during pre-trial detention (see paragraphs 2.5 and 2.6), the Committee considers that the facts as submitted disclose a violation of article 7 of the Covenant.

6.3 The author has claimed that her son was detained for one month, during which time he was not informed of the charges against him, and that her son's detention was illegal, in that he was not brought promptly before a judge or other official officer authorized by law to exercise judicial power to review the legality of his detention. In the absence of any State party observations, due weight must be given to the author's allegations. Accordingly, the Committee considers that the facts before it disclose a violation of article 9, paragraphs 1 and 2, of the Covenant.

² See J.G.A. Diergaardt et al. v Namibia, Case No. 760/1997, Views adopted on 25 July 2000, paragraph 10.2.

6.4 The Committee has noted the author's claims that her son was legally represented only one month after being charged with several crimes and all meetings between him and the lawyer subsequently assigned by the investigation were held in investigators' presence, in violation of article 14, paragraph 3 (b). The Committee considers that the author's submissions concerning the time and conditions in which her son was assisted by a lawyer before the trial adversely affected the possibilities of the author's son to prepare his defence. In the absence of any explanations by the State party, the Committee is of the view that the facts before it reveal a violation of Mr. Khomidov's rights under article 14, paragraph 3 (b), of the Covenant.

6.5 The Committee has noted the author's claim that the trial of Mr. Khomidov was unfair, as the court did not fulfil its obligation of impartiality and independence (see paragraphs 2.8 and 2.9 above). It has noted also the author's contention that her son's lawyer requested the court to call witnesses on his behalf, and to have Mr. Khomidov examined by a doctor to evaluate his injuries sustained as a result of the torture to which he was subjected to make him confess guilt. The judge denied his request without providing any reason. In the absence of any pertinent State party information on this claim, the Committee concludes that the facts before it disclose a violation of article 14, paragraphs 1, and 3 (e) and (g), of the Covenant.

6.6 With regard to the author's claim that her son's right to life under article 6 of the Covenant has been violated, the Committee recalls its constant jurisprudence³ that the imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have not been respected constitutes a violation of article 6 of the Covenant, if no appeal of the sentence is possible. In this case, the sentence of death was passed in violation of the right to a fair trial as set out in article 14 of the Covenant, and thus also in breach of article 6.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the Covenant, is of the view that the facts before it disclose a violation of articles 7; 9, paragraphs 1 and 2; 14, paragraphs 1, and 3 (b), (e) and (g), read together with article 6, of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Khomidov with an effective remedy, entailing commutation of his sentence to death, a compensation, and a new trial with all the guarantees of article 14, or, should this not be possible, release. The State party is under an obligation to take measures to prevent similar violations in the future.

9. 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

³See Conroy Levy v. Jamaica, communication No. 719/1996, and Clarence Marshall v. Jamaica, communication No. 730/1996.

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 in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]