



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-seventh session
12-30 November 2009

VIEWS

Communication No. 1519/2006

<u>Submitted by:</u>	Mr. Valery Khostikoev (not represented by counsel)
<u>Alleged victim:</u>	The author.
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	18 August 2006 (initial submission)
<u>Document References:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 22 November 2006 (not issued in document form).
<u>Date of adoption of Views:</u>	22 October 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Unfair trial

Procedural issue: none

Substantive issues: Bias and partiality of courts.

Articles of the Covenant: 14(1); 14(3)

Article of the Optional Protocol: 2

On 22 October 2009 the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No.1519/2006.

[ANNEX]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of
the Optional Protocol to the International Covenant on Civil and Political rights

Ninety-seventh session

concerning

Communication No. 1519/2006**

Submitted by: Mr. Valery Khostikoev (not represented by
counsel)

Alleged victim: The author.

State party: Tajikistan

Date of communication: 18 August 2009 (initial submission)

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

Meeting on 22 October 2009,

Having concluded its consideration of communication No. 1519/2006, submitted to the
Human Rights Committee by Mr. Valery Khostikoev 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 is Mr. Valery Khostikoev, a Tajik national born in 1963. He claims to be a victim of violations by Tajikistan of his rights under article 14, paragraphs 1 and 3 (b) and (d), of the International Covenant on Civil and Political Rights. The author is unrepresented. The Optional Protocol entered into force for the State party on 4 April 1999.

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

The facts as submitted by the author

2.1 In 1993, the author was appointed Director-General of the then State owned sports complex “Republican Swimming Pool”, which, according to the author, was the only Olympic size swimming pool in Dushanbe. According to him, when he took over his functions, the complex was completely devastated and was not subsidised by governmental funds. In order to save it, in 1997, the author and the employees of the complex negotiated with the Government’s Sports Committee and created a joint-stock company called “Republican Swimming Pool AOOT”. The company was registered in accordance with the provisions of the Law on stocks, and forty per cent of the shares were owned by the employees. The other sixty per cent remained State property through a structure called “Committee on the administration of State property”.

2.2 According to the terms of the agreement, the employees paid for thirty per cent of their shares immediately, and they had to pay the remaining part before 15 September 1998. Due to financial problems and to the unstable situation in the country at that moment, the employees managed to pay for the totality of their shares only in 2000.

2.3 The author affirms that later (exact date unspecified), the employees acquired the remaining sixty per cent of the company’s shares, pursuant to an agreement with the Committee on the administration of State property. Shortly after, the employees of the firm started to receive threats of physical persecution and were put under constant pressure by the Chairman of the Sports Committee and President of the Tajik Olympic Committee, one Mr. Mirzoev, who was also the former chief of the Presidential Guard. Apparently, Mr. Mirzoev wanted to acquire fifty two per cent of the company’s shares. The author claims that he was beaten in this connection, on two occasions, in the premises of the Olympic Committee, after which he left the country for nine months.

2.4 On 22 June 2005, the Office of the Prosecutor General initiated a procedure in the High Economic Court of Tajikistan, claiming that the sale of forty two per cent of the sport complex was unlawful and that it had caused important damage to the State. The author claims that his lawyers requested the court to allow him and the employees “to study the case file” before the case was decided, but the judge rejected their request, stating that they would be able to do so when they prepared an appeal against the judgment. The judge also had stated the following: “In which country do you [think you] live in? Bring me a letter from the President and we will decide in your favour”.

2.5 On 17 August 2005, the High Economic Court decided that the acquisition of the totality¹ of the company’s shares was unlawful, and asked the parties to be “returned to the initial situation”. The author affirms that the court in fact “copied” the Prosecution’s claim in its decision, and ignored all other evidence. He appealed against this decision to the Appeal Body of the Higher Economic Court. On an unspecified date, the Appeal Body rejected his appeal. The author then appealed to the Plenary of the Higher Economic Court, under a supervisory procedure, but his claim was rejected.

¹ The author points out in this respect that although the Prosecutor requested the court to declare unlawful the sale of only 42 per cent of the company’s shares, the court declared void the sale of the totality of the shares.

The complaint

3.1 The author claims a violation of his rights under article 14, paragraph 1, as, according to him, his trial did not meet the basic requirements for a fair trial. In addition, although the Tajik Civil Code provides a three-year statutory limitation for similar disputes, the Prosecutor's Office initiated the procedure in relation to events that took place five years earlier. However, the court ignored this issue. The court similarly ignored the fact that after the full payment of the shares, the parties had no disputes against each other. Prior to the trial, the presiding judge affirmed that if the author brought him a letter from the President, he would decide in his favour. This shows, in the author's opinion, that the proceedings were biased and that the court thus also failed in its duty of impartiality and objectivity. During the trial, the author requested the judge to accept additional evidence in relation to the acquisition of the firm's property, as well as financial documents about the firm's actual value at the moment of the transaction, but his requests were simply ignored.

3.2 The author also claims a violation of article 14, paragraph 3 (b), read together with article 14, paragraph 1, as his lawyers were not given the opportunity to study the case file prior to the beginning of the court trial. The court thus violated, according to the author, the principle of equality of arms.²

3.3 Finally, the author claims a violation of article 14, paragraph 3 (d), as his lawyer was not allowed to participate at the beginning of the court trial, because the court allegedly affirmed that his lawyer did not have the necessary documents to act. The author claims that this was only a pretext, and that his lawyer was in possession of all required documents. According to him, the court used formalistic arguments in order to obstruct the lawyer's work. The lawyer was only allowed to participate at the final stages of the trial.

State party's observations

4.1 The State party presented its observations by Note verbale of 20 March 2007³. It contends that, in the interest of the Tajik Government, a case was opened by the General Prosecutor's Office, on the privatisation of the public entity "Republican Swimming Pool", against the Tajik Committee on the management of State property, the State entity on the sale of State property, the company "Republican Swimming Pool AOOT", the Ministry of Finance of Tajikistan, two enterprises ("Badr", and "Telecom Technology Ltd."), the Tajik Swimming Federation, and the author⁴. The case was examined by the High Economic Court of Tajikistan on 17 August 2005.

² In this respect, the author refers to the decision of the European Court for Human Rights in the case of *Foucher v. France*, where the Court has found a violation of the applicant's rights under article 6 (3), read together with article 6 (1), of the European Convention for Human Rights.

³ The State party's observations are in fact a submission called « Information of the Higher Economic Court of Tajikistan ».

⁴ From the documents on file it appears that initially, in 1997, the employees of the sports complex acquired 40 per cent of the shares, the remaining 60 per cent remained State property. On an unspecified date, Mr. Khostikoev acquired the shares of the employees (and thus he owned 40 per cent of the complex). On 22 June 1998, the State sold another 12 per cent of the shares in a public auction. The shares were acquired by a firm "Badr" (4 per cent), another firm "Telecom Technology Ltd" (4 per cent), and the Tajik Swimming Federation (4 per cent).

The court satisfied the Prosecutor's Office request, the sale was declared void, and the parties were placed in the initial situation.

4.2 According to the State party, the court found that pursuant to an agreement of 3 October 1997, forty per cent of the shares of the entity "State Swimming Pool" were sold to the employees of the entity. Under paragraph 3.3 of the said agreement, the employees had until 15 September 1998 to pay for the totality of their shares. In case of non-respect of this obligation, as provided under paragraph 5.1 of the agreement, the sale was subject to annulment.

4.3 The court noted that, according to financial documents, the last payment of the shares in question was made on 14 July 2000, i.e. in breach of paragraph 5.1 of the agreement. Accordingly, the court concluded that the agreement of 3 October 1997 was void.

4.4 The court found also that the subsequent sale of twelve per cent of the shares of the sport complex on 22 June 1998 was unlawful, as it was contrary to paragraphs 28 and 58 of the Regulations on the sale of objects of privatisation by way of auctions and tenders. This provision requires that payments in relation to such contracts must be made during the 30 days following the conclusion of an agreement. In this case, the payment of the twelve per cent of the shares was not made within this time frame, but later. Accordingly, the court concluded that the auctions in relation to the twelve per cent of the shares were also void. The court further found that the sale of the remaining forty eight per cent of the shares of the sport complex was made in violation of paragraphs 107 and 109 of the Regulations.⁵

4.5 According to the State party, the first instance court correctly concluded that the sale of the totality of the shares of the sport complex was void. This conclusion was made following a thorough and comprehensive examination of all evidence and was lawful. For these reasons, on 17 October 2005, the appeal instance of the High Economic Court confirmed the decision of the first instance court. The decision was further examined by the Cassation instance of the High Economic Court, on 12 December 2005, and was once again confirmed.

4.6 The State party concludes by contending that all court decisions with respect to the present case were lawful and justified, and no violation of the author's rights occurred.

Author's comments on the State party's observations

5.1 The author presented his comments on 1 June 2007. He reiterates his claims under article 14, paragraph 1, of the Covenant, and recalls that the Prosecutor's Office and the courts did not respect the three-year statutory limitation rule established by the Tajik Civil Code. The Prosecutor's Office submitted its request five years after the contested events, without providing any justification for the non-respect of the statutory limitation. The author reiterates that the presiding judge made remarks before the start of the trial (see paragraph 2.4 supra). This shows that the court was biased and the case pre-judged. The author also asked to be allowed to submit

Subsequently (exact date not specified), the author acquired this 12 per cent of the shares from the new owners, and thus he owned 52 per cent of the complex. The remaining 48 per cent of the shares that belonged to the State were acquired by the author pursuant to an agreement of 10 September 2004.

⁵ No further explanations are provided.

additional evidence during the trial – in particular copies of newspapers containing announcements on the auctions and sales and financial documents on the company's real value - but his requests were rejected.

5.2 The author adds that before the examination of the case in court, the entity on the sale of State property submitted comments regarding the Prosecutor's request to the court. The entity did not see any irregularity on the sale of the Swimming Pool shares. It also affirmed that it had no claims, and fully confirmed the validity of the auctions, and the receipt of the full payment of the value of the shares.

5.3 Finally, the author contends that in its request to the court, the General Prosecutor's Office did not challenge the acquisition of hundred per cent of the Swimming pool shares, but only the acquisition of forty eight per cent of the shares.

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, as required by article 5, paragraph 2 (a) and (b), of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement, and it notes that it is uncontested that domestic remedies have been exhausted.

6.3 The Committee considers that the author's uncontested allegations of a violation of his right to fair trial under article 14, paragraph 1, of the Covenant (see paragraph 3.1 above) as his trial was biased and the court has failed to its duty of impartiality and objectivity; as the court did not respect the three-year statutory limitation for such cases; the absence of any disputes between the parties after the full payment of the shares of the sport complex; the remarks allegedly made to the author by the presiding judge prior to the trial; and the refusal of the court to accept additional evidence during the trial; have been sufficiently substantiated, for purposes of admissibility, and declares these claims admissible.

6.4 The author further claims that his lawyer was not given the opportunity to study the case file prior to the beginning of the court trial. In addition, the lawyer was allowed to take part only at the final stages of the trial. The Committee notes that the State party has not addressed these issues specifically, but has merely contended that no procedural violations of the author's rights occurred in the present case. In the circumstances, the Committee, however considers that this part of the author's allegations have been sufficiently substantiated, for purposes of admissibility, and declares them admissible as far as they raise issues under article 14, paragraph 1, of the Covenant. In light of this conclusion, the Committee considers that the author's allegations under article 14, paragraph 3 (b) and (d) are inadmissible as such.

Consideration on the merits

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

7.2 The Committee notes that the author claims a violation of his rights under article 14, paragraph 1, of the Covenant, because the court acted in a biased manner in his case, as it did not allow his lawyer to study the case file prior to the beginning of the court trial (see paragraph 2.4 above). The court also allegedly prevented, without sufficient justification, the author's lawyer from taking part in the initial stage of the court trial. In addition, at the beginning of the trial, the presiding judge allegedly made oral remarks to the author to the effect that if he brought a letter from the President of the Republic, he would obtain gain in his case. The author also claims that neither the prosecutor nor the courts ever addressed the issue of the non-respect of the statutory limitation (time bar) in his case, and they simply ignored the author's lawyer's objections in this regard. The trial court allegedly further refused to allow the possibility for the author to adduce relevant evidence. The court, finally, declared void the totality of the sale of the sport complex, whereas the Prosecutor's Office only requested the annulment of the sale of forty-eight per cent of the complex's shares.

7.3 The Committee notes that the State party did not refute these specific allegations, but limited itself to contending that all court decisions in the case were substantiated and that no procedural violations had occurred. The Committee considers that in the circumstances, and in the absence of any other pertinent information on file, due weight must be given to the author's allegations. In the circumstances of the present case, the facts as presented, and not refuted by the State party, tend to reveal that the author's trial suffered from a number of irregularities, which, taken as a whole, in the Committee's opinion, amount to a breach of the basic guarantees of a fair trial, such as *equality before the law and a fair hearing by an impartial tribunal*. The Committee concludes that the author's rights under article 14, paragraph 1, have thus been violated.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 14, paragraphs 1, of the International Covenant on Civil and Political Rights.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including the payment of appropriate 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 180 days, information about the measures taken to give effect to the Committee's views.

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