



**International  
covenant  
on civil and political  
rights**

Distr.  
RESTRICTED\*

CCPR/C/90/D/1017/2001&1066/2002  
7 August 2007

Original: ENGLISH

---

HUMAN RIGHTS COMMITTEE  
Ninetieth session  
9-27 July 2007

**VIEWS**

**Communications Nos. 1017/2001 and 1066/2002**

Submitted by: Ms. S. Strakhova, mother of Mr. Maxim Strakhov, and Mr. Asad Fayzullaev, on behalf of his son Nigmatulla (not represented)

Alleged victims: Messrs Maxim Strakhov and Nigmatulla Fayzullaev (both executed)

State party: Uzbekistan

Date of communications: 29 September 2001 and 26 March 2002, respectively (initial submissions)

Document references: Special Rapporteur's rule 92/97 decisions, transmitted to the State party on 16 October 2001 and 26 March 2002 (not issued in document form).

Date of adoption of Views: 20 July 2007

---

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

*Subject matter:* Imposition of death sentence after unfair trial, resort to torture during preliminary investigation.

*Substantive issue:* Torture; unfair trial; arbitrary deprivation of life.

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

*Articles of the Covenant:* 6; 7; 10; 14; 15; 16

*Article of the Optional Protocol:* 2

On 20 July 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.1017/2001 and 1066/2002.

[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. 1017/2001 and 1066/2002\*\***

<u>Submitted by:</u>	Ms. S. Strakhova, mother of Mr. Maxim Strakhov, and Mr. Asad Fayzullaev, on behalf of his son Nigmatulla (not represented)
<u>Alleged victims:</u>	Messrs Maxim Strakhov and Nigmatulla Fayzullaev (both executed)
<u>State party:</u>	Uzbekistan
<u>Date of communications:</u>	29 September 2001 and 26 March 2002, respectively (initial submissions)

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

Meeting on 20 July 2007,

Having concluded its consideration of communications Nos. 1017/2001 and 1066/2002, submitted to the Human Rights Committee on behalf of Messrs Maxim Strakhov and Nigmatulla Fayzullaev, 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. Prafullachandra Natwarlal Bhagwati, 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. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

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

1.1 The authors are Ms. S. Strakhova, an Uzbek resident of Russian nationality, and Mr. Asad Fayzullaev, an Uzbek national. They submit the communications on behalf of their sons, Maxim Strakhov (a Russian national, born in 1977) and Nigmatulla Fayzullaev (an Uzbek national, born in 1975), both executed, who, according to the authors when submitting their communications, were awaiting execution following death sentences imposed by the Tashkent City Court on 18 April 2001. The authors claim that their sons are victims of violations by Uzbekistan of their rights under article 6; article 7; article 10; article 14; article 15; and article 16 of the Covenant. They are unrepresented.

1.2 When registering the communications on 16 October 2001 and 26 March 2002, and pursuant to its rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party not to carry out the alleged victims' executions while their cases were under examination. On 21 October 2002, Ms. Strakhova informed the Committee that her son was executed on 20 May 2002. On 2 August 2005, the State party notified to the Committee that Strakhov's and Fayzullaev's death sentences had in fact been carried out before the registration of their cases by the Committee and the formulation of the request for interim measures. The State party does not provide the exact dates of execution, in spite of the fact that it was specifically requested to do so.

1.3 On 20 July 2007, during the 90<sup>th</sup> session of the Human Rights Committee, the Committee decided to join the consideration of these two communications.

### **Factual background**

2.1 Both alleged victims were co-defendants in a criminal case. They were found guilty and sentenced to death on 18 April 2001 by the Tashkent City Court for stealing of a particularly important amount of money, unlawful acquisition and sale of foreign currency, robbery committed in an organized group, premeditated murder, on 29 September 2000, under aggravating circumstances of the members of one Luftiddinov's family (consisting of four individuals including two minors), with particular violence, and pursuing selfish ends, and with the intention to conceal another crime. In addition, Fayzullaev was convicted for the rape of Mrs. Luftiddinova, accompanied by death threats. The death sentences were upheld by the Supreme Court on 13 September 2001. Both authors affirm that their sentence was disproportionately severe and unfounded.

### **Case of M. Strakhov**

2.2 The first author, Ms. Strakhova, contends that the conviction of her son does not correspond to his personality. A written attestation in which his employer assessed him positively was submitted to the court in this respect. The court ignored that he had served in the Russian armed forces during the Chechen conflict. After his return to Uzbekistan, he developed the so-called "Chechen syndrome" (similar to the "Viet Nam syndrome"), and in his mind, he continued to fight. He could not sleep properly and woke up regularly, shouting. He could not walk on grass as he was afraid of land mines. He developed schizophrenia which affected his normal behavior. The author claims that when a psychiatric expert examined her son to assess

his situation in the context of the criminal proceedings against him, the examination was carried in unsatisfactory conditions, and he was not admitted for an appropriate stay in hospital, which would have permitted a proper assessment of his condition. In these circumstances, according to the author, the court should have concluded that he had acted in a state of affect<sup>1</sup>. The court rejected the request of the defence to conduct a complementary psychiatric examination to establish the real situation.

2.3 According to the author, in order to conceal that the investigators had acted incompetently, the judge refused to allow Strakhov's mother and his wife to testify on his behalf in court.

2.4 The author contends that her son was severely beaten and tortured after his arrest and forced to confess guilt. He confessed but could not provide a motive for the murder, because, according to the author, he was in a state of affect.. Thus, he could not describe the crime weapon - a knife –nor the manner in which he himself was stabbed by one of his victims, Lutfiddinov

2.5 The author affirms that according to a judgment of the Supreme Court of Uzbekistan of 1996, evidence obtained through unlawful methods is inadmissible. This was not respected in her son's case. The appeal court did not examine the case properly but simply confirmed the first instance verdict, in violation of article 463 of the Criminal Code<sup>2</sup>. In addition, at the beginning of the trial, her son and Fayzullaev were intimidated by the victims' families. One of the relatives of the murdered persons, Kurbanov, allegedly publicly stated that he would ensure that Strakhov would be raped before the end of the trial. The presiding judge did not take action to stop such intimidation.

2.6 According to the author, the above facts show that the courts' conclusions did not correspond to the circumstances of the case. In addition, the principle that it is not for the accused to prove his/her innocence, or that all remaining doubts should benefit the accused were, according to the author, not respected in her son's case. The verdict was based on material collected by the investigation but that was not confirmed during the trial.

2.7 The author contends that pursuant to article 22 of the Uzbek Criminal Procedure Code, evidence must be assessed in depth, comprehensively, objectively and exhaustively. In her son's case, however, the investigation and the court proceedings were conducted in an accusatory manner, and the examination of the case was superficial, incomplete, and biased.

2.8 On 21 October 2002, Ms. Strakhova informed the Committee that her son had been secretly executed. S He submits a copy of a death certificate issued on 28 June 2002, which

---

<sup>1</sup> A state of sudden deep emotion. Unlike the pathologic affect (that supposes a more lengthy psychical disorder), the physiologic affect (invoked by the author) is a short emotional state (rage, fear), that does not deprive the individual concerned of his/ her capacity to realise, control his/her acts and behaviour, and to account for them. A crime committed in a state of physiologic affect does not exclude the engagement of a criminal liability, but in certain situations it may be seen as constituting a mitigating circumstance.

<sup>2</sup> Pursuant to this provision, a conviction must be based on established evidence, obtained as a result of a verification of all the circumstances of the crime, the clarification of all gaps, and after the elimination of all doubts and contradictions in the case.

shows 20 May 2002 as date of the execution. She claims that the execution took place, notwithstanding that pursuant to the Criminal Code, death sentences may only be carried out once the President's administration has refused to grant a pardon. According to the author no replies to numerous requests for a presidential pardon were received in her son's case.

### **Case of Fayzullaev**

2.9 Asad Fayzullaev contends that his son Nigmatulla was severely beaten after his arrest to force him to confess guilt, and was placed under moral and psychological pressure<sup>3</sup>. He refers to the 1996 judgment of the Supreme Court on the inadmissibility of evidence obtained unlawfully, and affirms that the court committed several procedural violations in order to validate the unlawful acts of the investigators who conducted the pre-trial investigation.

2.10 The author, his wife, and his son's wife were not allowed to testify on Fayzullaev's behalf in court. The court did not proceed to a comprehensive, full, and objective examination of all circumstances of the case. The presiding judge did not attach importance to the contradictions in the testimonies of different witnesses<sup>4</sup>.

2.11 With reference to article 463 of the Uzbek Criminal Procedure Code (see footnote 3 above), the author affirms that neither the trial nor the appeal court dispelled the outstanding doubts in his son's case. Instead, they simply ignored them.

2.12 The author claims that the investigators violated the principle that a person can only be prosecuted for acts for which his/her guilt can be proven beyond reasonable doubt, and prepared an indictment in which they described the author's son as a maniac and murderer, who, following a previously established plan with Strakhov, raped and then murdered an individual in a helpless situation, and then robbed her apartment. According to the author, his son had no intention to kill. In addition, the trial court wrongly concluded that his acts were committed with particular violence, because under Uzbek law, this qualification presupposes that, prior to the murder, the victim is subjected to torture or humiliating treatment, or suffers particular pain, which had not been the case.

---

<sup>3</sup> The author submits a copy of three letters from 2002 that he, his wife, and his son's wife have addressed to the Office of the President of Uzbekistan, in which they ask to have an investigation on the tortures and ill-treatment the author's son was subjected to during the preliminary investigation. For example, in her letter, Nigmatulla Fayzullaev's wife contends that when she was waiting with her father in law (i.e. the author) to meet with her husband after his arrest at the entry of the City Police Department of the Mirzo-Ulugbeksk District, they witnessed that an ambulance was arriving on several occasions. As they understood later, the ambulances were called by the police in order to have the author's son reanimated, because he was losing conscience during the beatings. When later they were allowed to meet with him, Fayzullaev's face was swollen and bruised, he had pain to open his eyes and his vision focus was bleary. He had bruises on his neck as well, was hardly able to stand and could not talk but only whispered that he felt pain in the thorax area and the kidneys.

<sup>4</sup> The author refers to different testimonies given by witnesses in relation to the discovery of the bodies in an apartment on 29 September 2000. As they give different indications about the exact moment of the discovery, the author wonders who exactly discovered the bodies.

2.13 According to the author, both the investigators and the court violated article 82 of the Uzbek Criminal Procedure Code<sup>5</sup>, because they failed to establish “the object of the crime, the nature and the extent of the prejudice, the existence of a causal link between the circumstances characterising the personality of the accused and the injured party”.

2.14 The author claims that his son was only examined by a psychiatrist in unsatisfactory conditions, and was not committed for a comprehensive examination to a psychiatric hospital. He contends that the crime was the result of a sudden state of deep emotion of his son, due to the victim’s attempt to “blackmail and extort” him. According to him, the courts should have concluded that his son acted in a state of affect when committing the murder.

2.15 At the beginning of the trial, the accused were intimidated and threatened by the victims’ relatives, but the presiding judge did not intervene. This demonstrates, according to the author, that the court failed in its duty of objectivity and impartiality.

2.16 The author claims that at the end of the trial, the presiding judge violated article 449 of the Criminal Code which regulates the conduct of the final stages of the criminal trial, and according to which the Prosecutor speaks first, then the injured parties, followed by the defence and, ultimately, the accused. However, in the author’s son’s trial, after the prosecutor’s statement, the accused individuals spoke, followed by defence counsel, and only then the floor was given to the injured parties. The accused could not object to the injured parties’ statements.

2.17 According to the author, the Tashkent City Court merely explained that there were no mitigating circumstances, which demonstrated the formalistic and biased approach of the court, in the absence of a comprehensive assessment of all mitigating circumstances in the case. Article 55 of the Criminal Code enumerates as mitigating circumstances confessions that helped to elucidate a crime. The court refused to take into account the young age of the author’s son, that he was taking care of his aging parents, of his two children and of his unemployed wife.

2.18 The author concludes that in light of the above facts, it becomes clear that the court’s conclusions did not correspond to the factual circumstances of the case. All remaining doubts should have benefited his son. Instead, the conviction was based on elements that were unconfirmed in court. Pursuant to article 22 of the Criminal Procedure Code, all evidence must be assessed in depth, comprehensively, objectively and exhaustively. In this case, the investigation and the court proceedings were conducted in an accusatory manner, and the examination of the case was superficial, incomplete, and biased, and the principle of presumption of innocence was not respected. This resulted in an unfounded conviction and death sentence.

### **The complaints**

3. Both authors contend that their sons are victims of violation by Uzbekistan of their rights under article 6; article 7; article 10; article 14; article 15; and article 16 of the Covenant.

---

<sup>5</sup> “Basis for charging and sentencing”.

**State party's observations**

4.1 On 2 August 2005, the State party argued that the death sentences of the alleged victims were carried out prior to the registration by the Committee of their cases and the formulation of the request for interim measures of protection. This is why it could not comply with the request. It reminds that death sentences are executed only after a careful examination of the cases by the Supreme Court of Uzbekistan, which pays particular attention to the legality and fairness of the verdict, and to all the case's substantive and procedural issues.

4.2 The State party recalls that Strakhov and Fayzullaev were sentenced to death on 18 April 2001 by the Tashkent Regional Court, for stealing a particularly important amount of money, unlawful acquisition and sale of foreign currency, robbery committed in an organized group, premeditated murder under aggravating circumstances of two or more individuals in a helpless state, with particular violence, and pursuing selfish ends, and with the intention to concealing another crime. In addition, Fayzullaev was convicted for rape accompanied by death threats. The death sentences were upheld by the Supreme Court on 13 September 2001.

4.3 Both alleged victims were found guilty of having robbed the apartment of one Luftiddinov, murdered him and his two minor sons (born in 1989 and 1991) and his wife (who was previously raped by Fayzullaev). The money and values robbed amounted to some 3 million 610 522 sum<sup>6</sup>.

4.4 According to the State party, no torture or resort to other unlawful means of investigation occurred during the investigation or during the trial. All investigation acts and the court trial were carried in accordance with the legislation in force. Strakhov and Fayzullaev were represented by lawyers from the moment of their arrest, and all interrogations and acts of investigation were conducted in the presence of the lawyers.

4.5 The alleged victims' guilt was established by their confessions, testimonies of witnesses, and by the materials of the criminal case file and the court trial records, medical forensic experts' conclusions, ballistic evidence, and psychological and other experts' examinations. The court correctly determined the alleged victims' punishment, taking into account the aggravating circumstances under which the crime was committed.

**Author's comments on the State party's observations**

5. No comments were received from the authors, although the State party's observations were sent to them for comments and reminders were further addressed in this respect.

**Non respect of the Committee's request for interim measures**

6.1 When submitting their communications, on 29 September 2001 and 26 March 2002 respectively, both authors affirmed that their sons were awaiting executions in Tashkent, that their requests for Presidential pardon were still pending, and that under the provisions of the national law, no execution could take place in the absence of a reply to such pardon requests. The State party contended, in 2005, that the executions of the victims in fact took place prior to the registration of the cases and the formulation of the Committee's requests under rule 92 of its

---

<sup>6</sup> Equivalent to some 12 000 US dollars at the time of commission of the crime



rules of procedures, without however providing exact dates of the execution. The Committee notes that Ms. Strakhova has submitted a copy of a death certificate, establishing that her son was executed on 20 May 2002. The authenticity of the above certificate was not contested by the State party. In the circumstances, the Committee considers that the State party has failed to submit sufficient information that would show that the alleged victims' executions did not take place subsequently to the formulation of its request under rule 92.

6.2 The Committee recalls<sup>7</sup> that by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and article 1). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith, so as to enable it to consider such communications, and after examination to forward its Views to the State party and to the individual (article 5, paragraphs 1 and 4). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.

6.3 Apart from any violation of the Covenant found against a State party in a communication, a State party commits a grave breach of its obligations under the Optional Protocol if it acts to prevent or to frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In the present communication, both authors allege that their sons were denied rights under articles 6, 7, 10, 14, 15, and 16, of the Covenant. Having been notified of the communications, the State party breached its obligations under the Protocol by executing the alleged victims before the Committee concluded consideration and examination of the case, and the formulation and communication of its Views. It is particularly inexcusable for the State to have done so after the Committee acted under rule 92 of its Rules of Procedure.

6.4 The Committee recalls that interim measures pursuant to rule 92 of the Committee's Rules of Procedure adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Protocol. Flouting of the Rule, especially by carrying out irreversible measures such as, as in the present case, the executions of Mr. Maxim Strakhov and Mr. Nigmatulla Fayzullaev, undermines the protection of Covenant rights through the Optional Protocol<sup>8</sup>.

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

### **Consideration of the admissibility**

7.1 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.

---

<sup>7</sup> See, inter alia, *Davlatbibi Shukurova v. Uzbekistan*, Views adopted on 17 March 2006, paragraph 6.1.

<sup>8</sup> See, inter alia, *Davlatbibi Shukurova v. Uzbekistan*, Views adopted on 17 March 2006, paragraph 6.3.

7.2 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, and takes note that it remains uncontested that domestic remedies have been exhausted.

7.3 Both authors claim that in violation of article 14, paragraph 1, of the Covenant, in particular because the trial did not meet the basic requirements of fairness, the court was biased, and its assessment of facts was incorrect. The State party has rejected these allegations, by affirming that the court trial was carried in accordance with the legislation in force, and that the alleged victims were represented by lawyers from the moment of their arrest, and all interrogation acts were conducted in the presence of their lawyers. The Committee observes that the authors' 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 justice<sup>9</sup>. In the absence of other pertinent information that would show that evaluation of evidence suffered from such deficiencies in the present case, the Committee considers that this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.4 The authors claim that their sons' right to be presumed innocent under article 14, paragraph 2, was violated. These claims have not been substantiated by any other pertinent information. Even if they have not been specifically refuted by the State party, the Committee considers that these allegations have not been sufficiently substantiated, for purposes of admissibility, and thus this part of the communications is accordingly inadmissible under article 2 of the Optional Protocol.

7.5 The Committee considers that the claims under articles 15 and 16 have remained unsubstantiated, for purposes of admissibility, and therefore this part of their communications is accordingly inadmissible under article 2 of the Optional Protocol.

7.6 The Committee considers that the remaining part of the authors' allegations, raising issues under article 6; article 7; article 10; and article 14, paragraph 3 (g), has been sufficiently substantiated and declares them admissible.

### **Consideration of the merits**

8.1 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.

8.2 Both authors claimed that the alleged victims were beaten and tortured by investigators, and were forced to confess guilt. The State party has refuted this claim, by affirming that no torture or unlawful methods of investigation were used against the victims, that all acts of investigation and court proceedings were held in accordance with the law in force, and that both victims were represented by lawyers after their arrest. The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it

---

<sup>9</sup> See, *inter alia*, Communication No 541/1993, Errol Simms v. Jamaica, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

promptly and impartially<sup>10</sup>. The case file contains copies of complaints about ill-treatment that were drawn to the attention of the State party's authorities, including a copy of a letter from Mr. Strakhov in which he informs his family about beatings he suffered in detention, and copies of Mr. Fayzullaev's description of the status of his son when he could see him during the early stages of his detention. The Committee considers that in these particular circumstances, the State party has failed to demonstrate in any other concrete way that its authorities adequately addressed the torture allegations advanced by the authors in a substantiated way, both in the context of the domestic criminal proceedings and in the context of the present communication. Accordingly, due weight must be given to the authors' allegations. The Committee concludes that the facts as presented disclose a violation of article 7, and article 14, paragraph 3 (g), of the Covenant.

8.3 In light of the above conclusion, the Committee does not find it necessary to examine separately the authors' claims under article 10 of the Covenant.

8.4 The Committee recalls<sup>11</sup> that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes a violation of article 6 of the Covenant. In the present case, the death sentences were passed in violation of the rights set out in article 7 and article 14, paragraph 3 (g), of the Covenant, and thus also in breach of article 6, paragraph 2.

9. 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 the authors' sons' rights under article 7 and article 14, paragraph 3 (g), read together with article 6 of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors Ms Strakhova and Mr. Fayzullaev with an effective remedy, including compensation. The State party is also under an obligation to prevent similar violations in the future.

11. 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.]

---

<sup>10</sup> General Comment on article 7, No. 20 [44], adopted on 3 April 1992, paragraph 14.

<sup>11</sup> See *Conroy Levy v. Jamaica*, communication No. 719/1996, and *Clarence Marshall v. Jamaica*, communication No. 730/1996.