



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Ninety-fourth session  
13-31 October 2008

**DECISION**

**Communication No. 1018/2001**

<u>Submitted by:</u>	L. G. (not represented by counsel)
<u>Alleged victim:</u>	N. G. (the author's son)
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	16 October 2001 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 16 October 2001 (not issued in document form)
<u>Date of adoption of decision:</u>	30 October 2008

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

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

*Substantive issue:* torture; forced confession; unfair trial.

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

*Articles of the Covenant:* 6; 9; 10; 14; 15; 16

*Articles of the Optional Protocol:* 1; 2

[Annex]

**ANNEX**

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE  
OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON  
CIVIL AND POLITICAL RIGHTS

Ninety-fourth session

concerning

**Communication No. 1018/2001\***

Submitted by: L. G. (not represented by counsel)  
Alleged victim: N. G. (the author's son)  
State party: Uzbekistan  
Date of communication: 16 October 2001 (initial submission)

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

Meeting on 30 October 2008,

Adopts the following:

**DECISION ON ADMISSIBILITY**

1.1 The author of the communication is L. G., an Uzbek national born in 1961. She submits the communication on behalf of her son, N. G., an Uzbek national born in 1979, who at the time of submission of the communication was on death row, following a death sentence imposed by the Tashkent City Court on 29 March 2001. The author claims that her son is a victim of violation, by Uzbekistan, of his rights under articles 6; 9; 10; 14; 15; and 16, of the International Covenant on Civil and Political Rights. The author is unrepresented by counsel.

1.2 While registering the communication, and pursuant to rule 92 of its rules of procedures, the Human Rights Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party not to carry out N. G.'s death sentence, pending the consideration of his communication.

**The facts as submitted by the author**

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\* 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, Ms. Helen Keller, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

2.1 On 29 March 2001, the Tashkent City Court found N. G. guilty of theft, robbery, attempted robbery, and murder committed with particular violence, and sentenced him to death penalty. The sentence was upheld on appeal, on 29 April 2001, by the appeal panel of the Tashkent City Court.

2.2 The author claims that her son's sentence was particularly severe and groundless, and did not correspond with his personality. He was positively assessed by his neighbours and his employer and documents to this effect were submitted to the court. Also, according to the author, the court had no grounds to conclude that the murder her son was convicted for was committed with the intention to rob the victim. Some items were taken from the victim's apartment only in order to simulate a robbery.

2.3 The author further contends that the court failed to clarify the exact role and the nature of the acts of each of the individuals present at the crime scene. It wrongly concluded that the murder was committed with a particular violence.

2.4 The court allegedly did not take into account the fact that prior to the murder, her son was provoked by the victim Mrs Normatova, who humiliated him in the presence of his girlfriend. As a result, he got in a state of deep emotion. This should have been seen as a mitigating circumstance.

2.5 The author also claims that the court, in determining her son's sentence, had ignored a Ruling of the Supreme Court of 20 December 1996, pursuant to which even if the death penalty is provided by law, it is not mandatory.

2.6 The court allegedly also disregarded another Ruling of the Supreme Court according to which in death penalty cases, courts must take into account all circumstances of the crime and the personality of both the accused and the victims. The author claims that the court did not pay attention to the negative data on the personality of the murdered Mrs. Normatova. The trial court also ignored the requests of the defence to order an additional psychiatric examination of her son<sup>2</sup>.

2.7 L. G. points out that pursuant to article 23 of the Uzbek Criminal Procedure Code, it is not incumbent on the accused to prove his/her innocence, and any remaining doubts are to his/her benefit. However, the court did not comply with these requirements in her son's case.

2.8 In an additional submission dated 27 October 2001, the author reiterates her initial allegations and adds that her son was beaten and tortured by the police during the preliminary investigation, and thus forced to confess guilt<sup>3</sup>. According to the author, her son had confessed

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<sup>2</sup> In this connection, the author affirms that her son's initial psychiatric expert's examination was made very superficial, with no hospitalisation.

<sup>3</sup> The author submits a copy of an undated letter of her son, sent from a detention centre, prior to the court trial. He explains that he was beaten by the police, at the police station, but not at the Detention Centre where he was kept at the moment. From the documents on file it appears that these allegations were not raised on appeal. By letter of 25 June 2001, the author informed the Minister of Justice of the alleged beatings of her son and asked to have his case reconsidered. She submits a copy of a letter dated 4 October 2001, by which the Head of the OSCE Office in

the murder during the investigation, but did not recall the exact circumstances because he was in a state of deep emotion when the crime was committed. According to her, the court also disregarded a ruling of the Supreme Court of 1996 indicating that evidence obtained through unauthorised methods of investigation was inadmissible.

### **The complaint**

3. The author claims a violation of her son's rights under articles 6; 9; 10; 14; 15; and 16, of the Covenant.

### **State party's observations and absence of author's comments thereon**

4.1 The State party submitted its observations on 2 August 2005. It notes that on 29 March 2001, the Tashkent City Court found N. G. guilty under articles 127 (involvement of a minor in anti-social behaviour); 227 (acquisition, destruction, damaging or concealment of documents, seals, etc); 164 (robbery in a particular serious amount, committed by an organised group; attempted robbery); 97 (intentional murder, under aggravating circumstances, committed with particular violence in order to conceal another crime). For the totality of these crimes N. G. was sentenced to death. This sentence was confirmed on appeal by the Appeal Panel of the Tashkent City Court, on 29 April 2001.

4.2 The State party explains that N. G. was a member of an organised group led by one Sermiagina. On 12 July 2000, the group broke into the apartment of one Ms. Rasulova, in Tashkent, and stole items for an amount of 2 551 900 soms and personal documents. On 22 July 2000, N. G. committed an attempted robbery in the apartment of one Ms. Fedorina, but failed to achieve his purpose for reasons beyond his control.

4.3 Again on 22 July 2000, the group visited an acquaintance, Mrs. Normatova, in her apartment. After having consumed alcohol, N. G. kicked Mrs. Normatova in the head with a dumbbell, and then strangled her with a belt; in the meantime, Mrs. Sermiagina stabbed the victim with a scalpel. Mrs. Normatova died as a result. N. G. and Mrs. Sermiagina escaped from the crime scene after stealing items for 2 388 000 soms.

4.4 The State party explains that N. G. was not subjected to torture or other unlawful treatment either during the preliminary investigation or during the trial. All the investigation acts and the trial were carried out in compliance with the legislation in force. N. G. was represented by a lawyer since his arrest, and all interrogations and other investigative acts were held in the lawyer's presence.

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Tashkent wrote to the Chairman of the Supreme Court, with reference to L.G.'s allegations on the use of unlawful methods of investigation against her son during the preliminary investigation. No information is on file on the outcome of this correspondence.

<sup>8</sup> See, inter alia, Communication No. 541/1993, Errol Simms v. Jamaica, inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

4.5 The State party concludes by affirming that N. G.'s guilt was confirmed by his confessions, the depositions of Mrs. Sermiagina and those of his brother, witnesses' testimonies, and other evidence (expert's conclusions, records, medical-forensic examinations, etc).

4.6 On 18 January 2007, the State party submitted further information. It explains that on 12 February 2002, the Supreme Court of Uzbekistan re-examined N. G.'s case and commuted the death penalty to 20 years of imprisonment. Subsequently, six different Amnesty Acts were applied to the author's son. On 30 April 2004, the Karshinsk City Court ordered N. G.'s transfer to a prison colony. On 24 December 2006, the remaining term to serve by N. G. consisted of one month.

4.7 The author did not submit any comments on the State party's observations, despite the fact that they were duly addressed to her and several reminders were sent.

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

### **Consideration of admissibility**

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 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, 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 that it is uncontested that domestic remedies have been exhausted.

5.3 The Committee has noted the author's claims that her son's rights under articles 9, 10, 15, and 16 of the Covenant have been violated. However, she does not provide any information to substantiate her claims. In the absence of any other pertinent information in this respect, this part of the communication is deemed inadmissible, as insufficiently substantiated for purposes of admissibility, under article 2 of the Optional Protocol.

5.4 The Committee has noted that the author's allegations about the manner in which the courts handled her son's case, assessed evidence, qualified his acts, and determined his guilt, may raise issues under article 14 of the Covenant. The State party has rejected these allegations. The Committee observes that in any case, these allegations relate primarily to the evaluation of facts and evidence by the State party's courts. 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>4</sup>. In the present case, the Committee considers that in the absence of other pertinent information from the author, and in the absence in the case file of any court records or trial transcripts, which would make it possible to verify whether the trial in fact suffered from the defects alleged by the author, this part of the communication is inadmissible under article 2 of the Optional Protocol as insufficiently substantiated.

5.5 The Committee has noted the author's allegations that her son was beaten and tortured, and thus forced to confess guilt in the crimes he was later convicted for. It observes however that the

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author did not formulate these particular allegations in her initial communication but only at a later stage, and that she did not provide detailed information in that regard, such as the identity of those responsible or the methods of torture used. The author has also failed to explain whether any attempt to have her son examined by a medical doctor was ever made, or whether any complaint was filed in this connection. It remains also unclear whether these allegations have been drawn to the attention of the trial court. In addition, the Committee notes that the appeal filed on N. G.'s behalf to the Appeal Body of the Tashkent City Court does not contain any reference to acts of ill-treatment or otherwise unlawful methods of investigation. In the absence of any other pertinent information in this connection, the Committee considers that the author has failed to sufficiently substantiate her claims, for purposes of admissibility. Accordingly, this part of the communication is also inadmissible under article 2, of the Optional Protocol.

5.6 In light of the above findings, and taking into account that the alleged victim's death sentence was commuted on 12 February 2002, the Committee does not consider it necessary to examine the author's claims under article 6 of the Covenant.

6. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That this decision shall be communicated to the State party and to the author.

[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.]

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