



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninetieth session
9-27 July 2007

VIEWS

Communication No. 1041/2001

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| <u>Submitted by:</u> | Mrs. Shevkhie Tulyaganova (not represented) |
| <u>Alleged victims:</u> | Refat Tulyaganov (the author's son, deceased) |
| <u>State party:</u> | Uzbekistan |
| <u>Date of communication:</u> | 12 December 2001 (initial submission) |
| <u>Document references:</u> | Special Rapporteur's rule 92/97 decision, transmitted to the State party on 24 December 2001. (not issued in document form) |
| <u>Date of adoption of Views:</u> | 20 July 2007 |

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of death sentence after unfair trial with and 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; 9; 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 communication No.1041/2001.

[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

Communication No. 1041/2001**

Submitted by: Mrs. Shevkhie Tulyaganova (not represented)

Alleged victims: Refat Tulyaganov (the author's son, deceased)

State party: Uzbekistan

Date of communication: 12 December 2001 (initial submission)

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 communication No. 1041/2001, submitted to the Human Rights Committee on behalf of Mr. Refat Tulyaganov, 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

1.1 The author is Mrs. Shevkhie Tulyaganova, an Uzbek national born in 1955. She submits the communication on behalf of her son, Refat Tulyaganov (executed), who at the time of submission of the communication was awaiting execution following a death sentence imposed by the Tashkent City Court on 5 July 2001. She claims that her son is a victim of violations by Uzbekistan of his rights under article 6; article 9; article 14; article 15; and article 16, of the Covenant. She is unrepresented.

** 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, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

1.2 When registering the communication on 24 December 2001, and pursuant to rule 92 of its rules of procedures, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party not to carry out the author's son's execution while his case was under examination. On 27 September 2002, the author notified the Committee that she had been informed that her son was executed on 18 January 2002, despite the Committee's request¹.

Factual background

2.1 On 7 January 2001, Mr. Tulyaganov was arrested in Tashkent, together with two friends, Kim and Urinov, as a murder suspect. All three were accused of having planned and murdered, acting in an organised group, one Temur Salikhov, and attempted to murder two other persons, Ruslan Salikhov and Ruslan Fayzrakhmanov, early the same day. According to the investigators, the motive was that in 1998, Temur Salikhov (then Tulyaganov's and Kim's classmate) had testified against both the author's son and Kim to the effect that they had attacked a taxi driver and had stolen his money, on which basis they were sentenced to 8 and 9 years' imprisonment, respectively. After serving their prison terms, according to the investigators, they decided to punish Temur Salikhov².

2.2 On 6 January 2001, late in the evening, the three went to a dancing bar in Tashkent. Temur Salikhov was in the bar. At around 5 a.m. on 7 January 2001, the bar closed. Tulyaganov, Kim and Urinov stood outside, waiting for Salikhov to come out. When Salikhov left, he was accompanied by his brother and an acquaintance Fayzrakhmanov. The author's son and Kim asked Temur Salikhov to explain the motive for testifying against them in 1998. At some point, Tulyaganov and Salikhov began a fight and Salikhov's brother tried to separate them. Tulyaganov stabbed him with a knife, as he did with Temur Salikhov's acquaintance, and then stabbed Temur Salikhov three times in the thorax area. According to the author, her son only attempted to protect himself because he was attacked.

2.3 Temur Salikhov was brought to a hospital emergency ward but could not be revived. According to the forensic expert's conclusion, he died from blood loss. The author claims that his death was in fact due to the inadequate and untimely intervention by the personnel of the hospital.

2.4 On 5 July 2001, the Tashkent City Court found all three accused guilty of premeditated murder under aggravated circumstances, and attempted murders, and sentenced Tulyaganov to death, and the others to 18 and 20 years' prison terms respectively. On 21 August 2001, the appeal instance of the Tashkent City Court examined Tulyaganov's appeal and upheld the death

¹ During its 76 session (October 2002), the Committee deplored the State party's failure to comply with the Committee's request for interim measures. The State party was asked to provide explanations for its conduct. The State party did not present any observations in this relation, in spite of two reminders to this effect (sent in 2004 and 2006)..

² Following the application to their cases of several Amnesty acts, the author's son and Kim were released in May 2000 and November 2000, respectively.

sentence. The criminal case was subsequently examined by the Supreme Court, under supervisory proceedings³, and the alleged victim's death sentence was confirmed.

2.5 The author contends that immediately upon arrest, her son was beaten and tortured and forced to confess guilt, and that he was placed under "moral and psychological" pressure. According to a Ruling of the Supreme Court of 20 February 1996, the use of evidence obtained by illegal methods of investigation such as physical coercion or psychological pressure is not allowed. The author also claims that her son's lawyer submitted a request to the District Police Department to have her son examined by a medical doctor, so as to confirm that he was subjected to ill-treatment but the investigator in charge of the case refused to comply with the request⁴.

2.6 The author submits that the sentence of her son was particularly severe and unfounded. In substantiation, she submits the following:

a) The punishment handed down does not correspond to her son's personality. After he served his sentence of 1998, he started work, enrolled at University, and led a normal way of life. This was attested in writing by University authorities, his employer, and his neighbours.

b) The investigators and the court violated article 82 of the Uzbek Criminal Procedure Code⁵, because they failed to establish "the object of the crime, the nature and the size of the prejudice, the existence of a causal link between the circumstances characterising the personality of the accused and the injured party". The court did not take into account that the murder was not premeditated but was the result of the sudden deep emotion of her son, because of the injuries and the humiliation caused by Temur Salikhov. The author refers to a medical record in the criminal case file, which established that her son suffered from heavy bodily injuries.

c) Pursuant to the Ruling of the Supreme Court "On the court's practice in premeditated murders cases", the qualification, under article 97, part 2 (a) of the Criminal Code (CC), relates to situations of premeditated murder of two or more individuals, simultaneously, i.e. to circumstances different from the present case. Notwithstanding, the courts convicted her son under this provision.

d) Her son was also convicted under article 97, part 2 (c) (murder of a person in the state of helplessness), notwithstanding that it was not established whether during the fight T.S. ever reached this state. The author maintains that her son's conviction under article 97, paragraph 2 (d) CC (murder with intention to prevent an individual to accomplish his/her professional or public duty) is unfounded. The courts did not establish at what point in time the author's son decided to murder the persons accompanying Salikhov.

³ Proceedings that permit to challenge entered into force decisions, on issues of law.

⁴ The author submits a copy of a request for a Presidential pardon, where these allegations are presented. According to her, no reply was received.

⁵ "Basis for charging and sentencing".

e) Contrary to the requirements of an exhaustive examination of evidence in murder cases⁶, premeditation was not established in her son's case. Several witnesses testified that the meeting of 7 January was coincidental. The court's conclusion that the three co-accused followed a master plan was thus unfounded. The first instance court based its conclusions on 20 counts of evidence spelled out in the judgment, but it failed to establish that the murder was premeditated.

f) The courts qualified her son's acts *inter alia* under article 97, part 2 (g) CC (murder committed in a particular violent manner). "Particular violence" applies to situations where, prior to deprivation of life, the victim is subjected to torture or humiliating treatment and suffers particular pain. In the present case however, the murder took place in the presence of the victim's brother and an acquaintance. If the murder had been premeditated, Tulyaganov should have been certain that his plan would succeed. According to the author, this count was refuted by the evidence materials⁷ in the case file.

g) During the initial stages of the trial, the author's son was intimidated and threatened in the court room by the victims' families. Salikhov's father publicly stated that he would ensure that before the end of the trial, Tulyaganov would be "raped". The same relatives also attacked the author herself. The presiding judge did not attempt to interrupt these incidents, and according to the author, this was because the court took the victims' side, thus failing in its duty of impartiality and objectivity. The author affirms that the evidence in the case was not examined fully and objectively, because both the investigation and the court trial were conducted in an accusatory manner.

h) The judgment of the Tashkent City Court was contrary to the Supreme Court's Ruling "On the court judgment" of 2 May 1997. The court found no mitigating circumstances in her son's case, which confirms the formalistic and biased nature of the court's motivation. The author notes that repentance of the criminal who has helped to elucidate a crime is a mitigating circumstance under Uzbek law. She recalls that in the context of her son's previous criminal punishment, he was released early for good conduct, and was characterised positively both at work and by his neighbours.

i) The crime was also imputable to the victims, given their prior conduct. The author affirms that the medical examination of her son and of the victims, reveal that it was not her son who started the fight. Thus, the acts of the Salikhov brothers and their acquaintance Fayzrakhmanov were wrongly qualified as self-defence and the criminal proceedings against them were wrongly terminated.

j) The motive for the murder was, according to the author, "invented" by an investigator⁸.

⁶ The author refers to a Supreme Court Ruling « On the court practice in cases of premeditated murder ».

⁷ The author however does not specify what materials concretely could exclude the qualification of her son's acts under the above mentioned provision of the Criminal Code.

⁸ No further explanation is given for this allegation.

The complaint

3. The author claims that the facts as submitted amount to a violation of her son's rights under article 6; article 9; article 14; article 15; and article 16, of the Covenant.

State party's observations

4. On 23 May 2002, the State party confirmed that the author's son was sentenced to death by the Tashkent City Court on 5 July 2001, for having committed premeditated murder by administering three stabs with a knife in the heart of a 20 years' old man, Temur Salikhov, under aggravating circumstances, and attempted to murder Ruslan Salikhov and Fayzrakhmanov. On 21 August 2001, the appeal instance of the Tashkent City Court confirmed the death sentence. The case was also examined by the Supreme Court, which ultimately confirmed the death sentence. According to the State party, Tulyaganov's guilt was established by the evidence contained in the case file. In determining his guilt, the courts took into account that he had already been sentenced for crimes in the past.

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

5.1 On 27 September 2002, the author presented further information and commented on the State party's observations. First, she submits a copy of a death certificate that shows that her son's execution by firing squad took place on 18 January 2002. She recalls that the State party did not give any explanation for its non compliance with the Committee's request for interim measures⁹.

5.2 The author notes that the State party deliberately misrepresents the facts of the case, because Temur Salikhov died from blood loss and lack of timely medical assistance, and not because of the wounds he received.

5.3 The author notes that the State party does not refer to the conclusions of the medical examination of her son, carried out during the preliminary investigation, and which disclose that he sustained heavy bodily injuries.

5.4 The State party's reply does not explain on what grounds her son was charged with the attempted murder of Ruslan Salikhov and Fayzrakhmanov. In this regard, the author affirms that according to the conclusions of the medical examinations of the individuals in question, their bodies disclosed only minor knife wounds, i.e. only light bodily injuries that represented no danger to their lives.

⁹ The Committee discussed the situation during its 76th session. It deplored the State party's failure to comply with its interim measures request and asked the State party, in a Note verbale of 15 November 2002, to provide explanations for its conduct. In spite that it was reminded about this request on two occasions, no reply was received from the State party.

Non respect of the Committee's request for interim measures

6.1 The author affirms that the State party executed her son despite the fact that his communication had been registered under the Optional Protocol and a request for interim measures of protection had been duly addressed to the State party. The Committee recalls¹⁰ 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 (in the Preamble and in 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 concerned (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 final Views.

6.2 Apart from any violation of the Covenant found against a State party in a communication, a State party commits grave breaches 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 case, the author alleges that her son was denied his rights under various articles of the Covenant. Having been notified of the communication, the State party breached its obligations under the Protocol by executing the alleged victim before the Committee concluded its consideration and examination of the case, and the formulation and communication of its Views.

6.3 The Committee recalls that interim measures under rule 92 of its 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 irreversible measures such as, as in this case, the execution of Mr. Refat Tulyaganov, undermines the protection of Covenant rights through the Optional Protocol¹¹.

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.

7.2 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.

¹⁰ See *Piandiong v. the Philippines*, Communication No. 869/1999, Views adopted on 19 October 2000, paragraphs 5.1 to 5.4.

¹¹ See, *inter alia*, *Davlatbibi Shukurova v. Tajikistan*, Communication No. 1044/2002, Views adopted on 17 March 2006, paragraphs 6.1 -6.3.

7.3 The Committee has noted the author's claim that her son's rights, under article 9 of the Covenant, have been violated. In the absence of any other pertinent information in this regard, this part of the communication is deemed inadmissible, as insufficiently substantiated for purposes of admissibility, under article 2 of the Optional Protocol.

7.4 The Committee has noted that the author's allegations (see paragraph 2.6 above) about the manner the courts handled her son's case and qualified his acts, may raise issues under article 14, paragraphs 1 and 2, of the Covenant. It observes, however, that all 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 justice¹². Even if it would be within the Committee's competence to determine whether a trial was conducted in accordance with article 14 of the Covenant, in this case, the Committee considers that, in the absence, in the case file, of any court records, trial transcript, or expert conclusions, which would make it possible for the Committee to verify whether the trial in fact suffered from the alleged defects, the author has failed sufficiently to substantiate her claims under these provisions. In these circumstances, this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.5 The Committee further notes that the author has invoked a violation of her son's rights under articles 15 and 16 of the Covenant, without presenting any specific reasons why she considers these provisions to be violated. In the circumstances it decides that this part of the communication is inadmissible under article 2, of the Optional Protocol, as insufficiently substantiated, for purposes of admissibility.

7.6 The Committee considers that other allegations which appear to raise issues under article 6; article 7; and article 14, paragraph 3 (g) of the Covenant, have been sufficiently substantiated, for purposes of admissibility, 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 The author has claimed that her son was beaten and tortured by investigators to force him to confess guilt in the murder. According to her, and contrary to the requirements of a Ruling of the Uzbek Supreme Court of 20 February 1996, the Tashkent City Court used her son's confessions to establish his guilt and to convict him. The author also claims that her son's lawyer submitted a request to the District Police Department to have her son examined by a medical doctor, so as to confirm that he was subjected to ill-treatment but the investigator in charge of the case refused to comply with the request. These allegations were also brought to the attention of the Presidential administration when the author's son requested a Presidential pardon¹³, but no reply was ever received. The Committee recalls that once a complaint against ill-treatment

¹² See, inter alia, Communication No 541/1993, Errol Simms v. Jamaica, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

¹³ A copy of the undated letter to President is provided by the author.

contrary to article 7 is filed, a State party is duty bound to investigate it promptly and impartially.¹⁴ In this case, the State party has not refuted the author's allegations nor has it presented any information, in the context of the present case, to show that it conducted any inquiry in this respect. In these circumstances, due weight must be given to the author's allegations, and the Committee considers that the facts presented by the author disclose a violation of her son's rights under article 7 and article 14, paragraph 3 (g), of the Covenant.

8.3 The Committee recalls¹⁵ 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 author's son's death sentence was passed in violation of the guarantees 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 author's son's 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 Mrs. Tulyaganova 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.]

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

¹⁵ See, for example, *Conroy Levy v. Jamaica*, communication No. 719/1996, and *Clarence Marshall v. Jamaica*, communication No. 730/1996.