



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninety-first session
15 October - 2 November 2007

VIEWS

Communication No. 1150/2003

<u>Submitted by:</u>	Ms. Roza Uteeva (not represented by counsel)
<u>Alleged victim:</u>	Mr. Azamat Uteev (the author's brother, deceased)
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	7 January 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 7 January 2003 (not issued in document form)
<u>Date of adoption of Views:</u>	26 October 2007

* 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; unfair trial; arbitrary deprivation of life.

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

Articles of the Covenant: 6; 7; 9; 10; 14; 16

Article of the Optional Protocol: 2

On 26 October 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.1150/2003.

[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-first session

concerning

Communication No. 1150/2003*

Submitted by: Ms. Roza Uteeva (not represented by counsel)
Alleged victim: Mr. Azamat Uteev (the author's brother,
deceased)
State party: Uzbekistan
Date of communication: 7 January 2003 (initial submission)

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

Meeting on 26 October 2007,

Having concluded its consideration of communication No. 1150/2003, submitted to the
Human Rights Committee on behalf of Mr. Azamat Uteev 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 authors of the
communication, and the State party,

Adopts the following:

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

1.1 The author of the communication is Ms. Roza Uteeva, an Uzbek national of Kazakh origin.
She submits the communication on behalf of her brother, Azamat Uteev, also an Uzbek national
of Kazakh origin, born in 1981, who at the time of submission of the communication was
awaiting execution in Tashkent, after being sentenced to death by the Supreme Court of the
Republic of Karakalpakstan (Uzbekistan) on 28 June 2002. She claims that her brother is a

* 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. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc,
Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel
Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

victim of violations by Uzbekistan of his rights under article 6; article 7; article 9; article 10; article 14, paragraphs 1, 2, and 3; and article 16, of the Covenant. She is unrepresented.

1.2 When registering the communication on 7 January 2003, 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 brother's execution while his case was under examination. On 16 July 2003, the State party informed the Committee that Mr. Uteev's execution had already been carried out, without however providing the exact date of execution.

Factual background

2.1 On 28 June 2002, Mr. Azamat Uteev was found guilty and sentenced to death by the Supreme Court of the Republic of Karakalpakstan (Uzbekistan), for having murdered with particular violence one Saira Matyakubova (a minor), and having robbed money, jewellery, and other items for a total of 670 120 Uzbek sum from her parents' apartment, in the morning of 3 April 2002. After having committed the murder and the robbery, and in order to conceal his actions, he set fire to the apartment, posing a threat to the life of others, and causing damage to the victim's parents equal to 5 824 000 sum. On 6 August 2002, the judgment was reviewed by the appeal body of the Karakalpakstan Supreme Court, which confirmed the death sentence. On 26 November 2002, the Supreme Court of Uzbekistan also reviewed the case and confirmed the death sentence.

2.2 The author claims that her brother did not commit the murder of which he was convicted. He was beaten and tortured by investigators and thus forced to confess guilt. Furthermore, she claims that her brother's sentence was particularly severe and unfounded and that his punishment did not correspond with his personality. He was positively assessed by his neighbours and documents to this effect were submitted to the court.

2.3 The author refers to a ruling of the Supreme Court of Uzbekistan of 1996, according to which evidence obtained through unlawful methods is inadmissible. This was not respected in her brother's case. She claims that her numerous complaints to different institutions (Presidential administration, Ombudsman, General Prosecutor's Office, Supreme Court of Uzbekistan) about the irregularities committed by the investigators remained unanswered or were simply sent to the same service against whose actions she was complaining about.

2.4 The author contends that in court, her brother claimed that he was innocent and that he was initially interrogated as a witness in relation to the crimes but was later arrested. Officials from the District Unit of the Ministry of Internal Affairs and the Prosecutor's Office beat and tortured him, in the absence of a defence counsel. In describing the methods of torture used, he allegedly claimed that he was forced to wear a gas mask with obstructed air access and was thus prevented from breathing; he was also placed in salt water. According to the author, the court rejected her brother's claims, considering that they constituted a defence strategy to avoid criminal liability.

2.5 According to the author, the investigators and the court examined her brother's criminal case superficially and in a biased manner. In particular, the investigator did everything possible to avoid the engagement of the criminal liability of one Rinat Mamutov (a former colleague of the father of the murdered Matyakubova), who, according to the author, had committed the

murder.

2.6 The author claims 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. The court, however, did not comply with these requirements in her brother's case. The sentence was based on indirect evidence collected by the investigators that could not be confirmed in court, whereas evidence that could establish Uteev's innocence was lost during the investigation. In particular, the author contends that the record in relation to the examination of the crime scene mentioned that Uteev had stabbed the victim several times with a knife. According to her, her brother's hair, hands, and clothes should have disclosed blood marks. However, no expert's examination of his hair, hands, or of the substance under his nails was ever carried out, although this was crucial in establishing his guilt.

The complaint

3. The author claims that her brother is a victim of violations by Uzbekistan of his rights under article 6; article 7; article 9; article 10; article 14, paragraphs 1, 2, and 3; and article 16, of the Covenant.

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

4.1 The State party presented its observations on 16 July 2003 and 12 October 2005. It recalls that the alleged victim was sentenced to death by the Supreme Court of the Republic of Karakalpakstan on 28 June 2002, for robbery, premeditated murder, and deliberate destruction of property causing significant damages. On 6 August 2002, the appeal body of the Karakalpakstan Supreme Court confirmed the sentence. According to the State party, Mr. Uteev's guilt in committing the offences was proven, his illegal acts were duly classified under the law in force, and his punishment was determined after taking into account information on his personality and the public danger of the crimes he had committed. The State party states that the death sentence of the alleged victim has already been carried out, without however providing the exact date of the execution.

4.2 The author did not present comments on the State party's observations, in spite of three reminders.

Non respect of the Committee's request for interim measures

5.1 When submitting her communication on 7 January 2003, the author informed the Committee that at that point, her brother was on death row. On 3 February 2003, she submitted a written authorisation to act on behalf of Mr. Uteev that was signed by him, on 14 January 2003, i.e. subsequently to the transmittal to the State party of the Committee's request not to carry out the alleged victim's execution while his case is under consideration. On 16 July 2003, the State party informed the Committee that the alleged victim's execution had been carried out, without providing the date of execution. The Committee notes that it is uncontested that the execution in question took place despite the fact that the alleged victim's 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 recalls¹ 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.

5.2 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 brother 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.

5.3 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. Azamat Uteev, undermines the protection of Covenant rights through the Optional Protocol².

Issues and proceedings before the Committee

Consideration of the 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 that it is uncontested that domestic remedies have been exhausted.

6.3 The Committee has noted the author's claims that her brother's rights under articles 9 and 16, of the Covenant, have been violated. In the absence of any other pertinent information in this

¹ See, inter alia, *Piandiong v. the Philippines*, Communication No. 869/1999, Views adopted on 19 October 2000, paragraphs 5.1 - 5.4; *Shevkkhie Tulyaganova v. Uzbekistan*, Communication No. 1041/2001, Views adopted on 20 July 2007, paras 6.1 – 6.3; *Davlatbibi Shukurova v. Tajikistan*, Communication No. 1044/2002, Views adopted on 17 March 2006, paras 6.1-6.3. .

² See, inter alia, *Davlatbibi Shukurova v. Tajikistan*, Communication No. 1044/2002, Views adopted on 17 March 2006, paragraphs 6.1 -6.3.

respect, this part of the communication is deemed inadmissible, as insufficiently substantiated for purposes of admissibility, under article 2 of the Optional Protocol.

6.4 The Committee has noted that the author's allegations about the manner in which the courts handled her brother's case and qualified his acts, may raise issues under article 14, paragraphs 1 and 2, of the Covenant. It observes, however, that 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 justice³. In this case, the Committee considers that in the absence in the case file of any court records, trial transcript, or other pertinent information, 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.

6.5 The Committee considers that the author's remaining allegations, which appear to raise issues under article 6; article 7; article 10; 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

7.1 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.

7.2 The author has claimed that her brother was beaten and tortured by investigators to force him to confess guilt in the murder and other crimes. In court, he retracted his initial confessions made during the investigation, and explained that they were obtained under beatings and torture. The court rejected his claim as constituting a defence strategy aimed at avoiding criminal liability. These allegations were brought to the attention of the Supreme Court of Uzbekistan and were rejected. The Committee recalls that once a complaint against ill-treatment contrary to article 7 is filed, a State party is duty bound to investigate it promptly and impartially.⁴ In this case, the State party has not specifically, by way of presenting the detailed consideration by the courts, or otherwise, refuted the author's allegations nor has it presented any particular information, in the context of the present communication, to demonstrate 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 brother's rights under article 7 and article 14, paragraph 3 (g), of the Covenant.

7.3 In light of the above finding, the Committee does not find it necessary to address separately the author's claim under article 10 of the Covenant.

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

⁴ General Comment on article 7, No. 20 [44], adopted on 3 April 1992, paragraph 14.

7.4 The Committee recalls⁵ 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, Mr. Uteev'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, of the Covenant.

8. 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 brother's rights under article 7 and article 14, paragraph 3 (g), read together with article 6, paragraph 2, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Ms. Uteeva with an effective remedy, including 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. 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.]

⁵ See, for example, *Conroy Levy v. Jamaica*, communication No. 719/1996, and *Clarence Marshall v. Jamaica*, communication No. 730/1996.