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on Civil and Political
Rights**

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HUMAN RIGHTS COMMITTEE
Ninety fifth session
16 March – 3 April 2009

VIEWS

Communication No. 1418/2005

<u>Submitted by:</u>	Yuri Iskiyaev (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	12 November 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 16 August 2005 (not issued in document form). CCPR/C/87/D/1418/2005: Decision on admissibility adopted on 6 July 2006.
<u>Date of adoption of Views:</u>	20 March 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Detention of an individual on charges of extortion.

Procedural issues: Exhaustion of domestic remedies, lack of substantiation of claims

Substantive issues: Torture, cruel, inhuman and degrading treatment; violations during detention; unfair trial.

Articles of the Covenant: 7; 9, paragraph 1; 10; 14, paragraph 1, paragraph 3 (e), paragraph 5

Articles of the Optional Protocol: 2; 5(2)(b)

On 20 March 2009, the Human Rights Committee adopted the annexed text as Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No 1418/2005.

[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-fifth session

concerning

Communication No. 1418/2005**

<u>Submitted by:</u>	Yuri Iskiyaev (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	12 November 2004 (initial submission)
<u>Decision on admissibility:</u>	6 July 2006

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

Meeting on 20 March 2009,

Having concluded its consideration of communication No. 1418/2005, submitted to the Human Rights Committee on behalf of Mr. Yuri Iskiyaev 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,

Adopted the following:

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

1.1 The author of the communication is Mr Yuri Iskiyaev, a Tajik national, born in 1956. He claims to be a victim of a violation by Uzbekistan of his rights under article 7; article 9,

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, 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.

paragraph 1; article 10, paragraphs 1 and 2; and article 14, paragraphs 1, 3(e) and 5 of the Covenant¹. He is unrepresented.

1.2 On 16 January 2006, the Special Rapporteur on New Communications and Interim Measures decided to have the admissibility of the communication examined separately from the merits.

The facts as presented by the author

2.1 In 1996, the author left Tajikistan and settled in Samarkand, Uzbekistan, where he leased a bar and restaurant. A number of officers from the Uzbek Ministry of Internal affairs, including the Chief of the Anti-Corruption unit and the Chief of the Investigation Department, frequented the bar and restaurant, but never paid their bills. According to the author, they tried to extort money from him, and threatened him with imprisonment.

2.2 In August 1997, the author saw one of the waitresses who worked at his restaurant, Ms Boichenko, being beaten by one Mr Gaziev. The author intervened. Following the incident, Mr. Gaziev agreed to pay Ms. Boichenko \$US60 as a compensation for dental expenses arising from the beatings. It was arranged that a relative of Mr. Gaziev would give the money to the author, who would pass it on to Ms. Boichenko. However, on 3 September 1997, when the amount was supposed to be paid, the author was arrested by the police and placed in detention, where he was beaten and subjected to degrading treatment, including being forced to touch the genitals of one of the investigators. The author was then charged with extortion, for allegedly having blackmailed Mr. Gaziev under threat of pressing criminal charges against him in relation to his assault on Ms. Boichenko.

2.3 The author states that he was detained without an arrest warrant for four days, in contravention of the Criminal Procedure Code, which requires production of a warrant within 72 hours. During his detention, he was repeatedly and severely beaten. On 7 September 1997, unable to withstand the beatings, he attempted to commit suicide and had to be taken to hospital. A medical report, dated 7 September 1997, confirming the author's allegations, was submitted to the Committee. The report states that his condition was critical. He lost his consciousness and had a cut wound on his upper arm. On 13 September 1997, he was brought back to the detention centre, where he remained for over a month and was again subjected to beatings in order to make him confess to the charge of extortion. The author identified by name some of the individuals, who allegedly participated in his beatings. At one point, he was placed in solitary confinement, where conditions were very poor; the cell was not heated and he was deprived of warm clothes. He claims that he was systematically beaten in front of other prisoners "because he was a Jew".² He also claims that he was detained for more than a month with inmates categorized as particularly dangerous despite the fact that his court trial was still pending and he was not yet convicted.

2.4 The author's trial in the District Court of Samarkand took place on 3 December 1997 and it was very short. During the proceedings, the Court refused the author's requests to call Ms

¹ The Optional Protocol entered into force for the State party on 28 December 1995.

² In a subsequent communication, the author provides a handwritten note from an inmate who corroborates this statement.

Boichenko as a witness in his defence.³ At the conclusion of the author's trial, the District Court of Samarkand convicted him of extortion and sentenced him to 6 years imprisonment.

2.5 The author claims that he was tried by a district court, whereas the State party's law requires that foreign nationals have to be tried by a regional court at first instance. In this regard, he points out that the Court did not enquire about his nationality in spite of his requests.

2.6 On 9 March 1998, the author's appeal in cassation was rejected by the Regional Court of Samarkand. The author states that the appeal judgment was procedurally defective, as the signatures of all relevant judges and the date did not appear on the judgment.

2.7 On 1 November 2000, the author was pardoned pursuant to a Presidential Decree of 28 August 2000, and released.

The complaint

3. The author claims that his torture and degrading treatment whilst in detention constitute a violation of his rights under article 7 of the Covenant (torture and degrading treatment in detention), and that the poor conditions of detention violated his rights under article 10, paragraphs 1 (poor conditions in detention) and 2(a) (detention with particularly dangerous convicts while waiting for his trial). He claims that his unlawful detention violated his rights under article 9, paragraph 1 (procedural violations during detention) and that his trial entailed violations of his rights under article 14, paragraph 1 (incompetent court), 3 (e) (violation of a right to obtain the attendance of a witness); and 5 (violation in administration of an appeal judgement) of the Covenant.

State party's observations

4.1 In its submission dated 29 November 2005, the State party challenged the admissibility of the communication. It states that the author had not exhausted domestic remedies, as he had not sought a supervisory review of his conviction. In particular, the State party submitted that the author did not appeal to the Samarkand Regional Court or the Supreme Court of Uzbekistan. It also affirmed that the Institution of Ombudsman, as pursuant to article 1, of the Law on the Ombudsman, constitutes a "complement to the existing forms and means" of human rights protection. According to article 10 of the mentioned Law, the Ombudsman is empowered to examine individual complaints and to conduct its proper inquiries. The State party further contended that the author's assertions about violations of his rights are without foundation.

4.2 The State party noted that it has sent the author's complaint to the Samarkand Regional Court for supervisory review.

³ It transpires from the Court's decision that Ms Boichenko's statement was read out in Court. According to a subsequent supervisory review decision of the Samarkand Regional Court defence counsel consented to the statement of Ms.Boichenko being read out in Court.

Author's comments on the State party's observations

5.1 In his comments on the State party submission dated 19 January 2006 and 31 March 2006, the author provided further details of the poor conditions of the two correctional facilities in cities Kattakurgan and Navoi, in which he was imprisoned. In particular, he describes the unsanitary conditions and states that tuberculosis was rife. He complained about it to the administration of the prison. However, the chief of the administration threatened him that if he complained again, he would be made "rotten". As he complained "to other instances" against the administration's immobility, he was beaten on a daily basis and placed in an isolation cell for "15 to 20" days. He provided copies of cover letters signed by penitentiary administration to accompany his complaints allegedly on poor conditions in correctional facilities to several different authorities. He also asserts his innocence of the charge of extortion.⁴

5.2 The author forwarded to the Committee copy of the decision issued by the Samarkand Regional Court, dated 2 December 2005. The Court rejects the author's contentions.⁵ It concludes that: the author's guilt was established by the evidence; no procedural violations occurred in relation to his detention; whilst the signatures of the relevant judges and the date were indeed absent from the appeal decision, this did not invalidate the decision; the Court properly evaluated the written statement of Ms.Boichenko during the trial, and defence counsel had consented to her statement being read out in Court. Finally, the Court states that the authors' claims about having been tortured had not been confirmed and qualified the author's claims as a defence strategy aimed at avoiding criminal liability. In this regard, the Court notes that the author can take his complaint to the Chief Administrator of State Punishments⁶ or to the Chief Prosecutor.

Consideration of admissibility

6.1 On 6 July 2006, during its 87th session, the Committee considered the admissibility of the communication. On the State party's contention that the author had not sought supervisory review of his conviction and appeal, and had not appealed to the Ombudsman, the Committee noted, that the author's case was examined, on 2 December 2005, by the Deputy President of the Samarkand Regional Court, which concluded that there were no grounds to present a supervisory (protest) motion⁷. It also noted the author's claim that he had attempted to complain, with several authorities, about the poor conditions in detention, and that this was not refuted by the State party. In the absence of any other information from the State party, in particular a detailed

⁴ The author does not respond to the State party's submissions. However, he notes briefly that he had appealed to the General Procurator's Office, the President and the Ombudsman, although he does not explain the subject matter of his appeals, nor the results.

⁵ The decision states it has reviewed the author's complaint to the Human Rights Committee, and the decisions of the trial and appeal courts.

⁶ The so called 'GUIN' within the Ministry of Internal Affairs.

⁷ Supervisory review ('nadzor') is a discretionary review process common in former Soviet Republics, which the Committee has previously considered not to constitute an effective remedy for the purposes of exhaustion of domestic remedies: see, for example, Communication No 836/1998, Gelzauskas v Lithuania, Views adopted 17 March 2003.

description about the availability and the effectiveness, in practice, of the remedies it invoked, the Committee considered that it was not precluded by article 5 paragraph 2 (b) of the Optional Protocol to examine the communication.

6.2 On the alleged violation of article 9, the Committee noted that on 2 December 2005, the Samarkand Regional Court rejected this allegation, concluding that no procedural violations occurred in relation to the author's detention; it established that the author had been arrested on 4 September 1997 on charges of extortion, and was placed in custody on 6 September 1997. The author has not contested this. In the circumstances, the Committee concluded that he had failed sufficiently to substantiate this claim, for purposes of admissibility. Accordingly, this part of the communication was declared inadmissible under article 2 of the Optional Protocol.

6.3 The Committee concluded that the communication was admissible as far as the author's claims under articles 7, 10, and 14 had been sufficiently substantiated.

State party's additional observations

7.1 On 12 October 2006, the State party presented its observations on the merits of the communication in the form of an opinion issued by the Supreme Court. The Supreme Court confirms the findings of the Samarkand Regional Court of 2 December 2005 and finds no procedural violations during investigation and court proceedings. It submits that no unlawful methods were used against the author during the preliminary investigation as the claims were not confirmed. It also contends that all interrogations, investigation and court proceedings were conducted with the participation of a defence counsel. During the court trial the author had not complained about any violation of his rights during the preliminary investigation, in particular, use of proscribed methods of investigation and beatings by the police officials. It further states that the author and his counsel had agreed to have Ms. Boichenko's statement read out in court.

7.2 To the question of author's nationality it submits that the author testified that he was a stateless person.

7.3 Addressing the matter of missing signatures of cassation court judges the Supreme Court explains that the decision of the cassation court is signed by all judges, who participated during the examination of the case. The defendant and other participants in the process usually receive a legalised copy of the decision, which may not contain the signatures of all three judges. It concludes that the author's actions were classified correctly and the punishment was proportionate to the crime.

Author's additional comments

8.1 On 26 April 2007, the author disagrees with the conclusions by the Supreme Court and notes that his defence counsel, Ms. Rustamova, did not attend his trial despite his requests⁸, and thus she could not confirm the author's citizenship. The court appointed Ms. Bagirova as a defence counsel, but the author refused her services as he had already hired Ms. Rustamova. Furthermore, Ms. Bagirova tried to convince him to confess guilty in all charges brought against him. The author submits that he requested the court and the preliminary investigators to provide

⁸ The author does not explain why his defence counsel, Ms. Rustamova did not attend his trial.

documents confirming his identity, but this request was ignored. He also claims that he filed an objection to the judge, however the judge ignored his request. The author notes that Ms.Boichenko was present in the office of one of the investigators, where he was severely beaten, before being transferred to jail. She could have confirmed this, if she had been allowed to be present at his trial.

8.2 The author submits that two of the witnesses at the trial, were assistants to the judge, while other two witnesses were related to each other (mother and daughter). The rest of the witnesses were invited by Mr. Gaziev and thus gave testimonies in Mr. Gaziev's favour. The author claims that these persons had witnessed the beatings of Ms. Boichenko by Mr. Gaziev, but were not related to his own case.

Consideration of merits

9.1 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.

9.2 The Committee notes the author's claims that he was subjected to torture and degrading treatment while in detention to force him to confess guilt in extortion. It notes that the author has provided detailed information on the methods of torture as well as a medical report to corroborate his claims. He has also identified by name some of the individuals, who allegedly participated in his beatings. The Committee further notes that in its reply to the author's allegations, based on the present communication, the Samarkand Regional Court qualified the author's claims as a defence strategy aimed at avoiding criminal liability. The Committee notes, however, the medical report and the fact that the author had to be hospitalized while in detention. These facts should have been sufficient for the domestic authorities to initiate an investigation. The State Party did not comment on the medical report. 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 his rights under article 7 of the Covenant.

9.3 The Committee notes the author's submissions with details of the poor conditions of the two correctional facilities in which he was imprisoned. In particular, the author describes the unsanitary conditions, and states that tuberculosis was rife. He provided copies of cover letters signed by penitentiary administration to accompany his complaints allegedly on poor conditions in correctional facilities to several different authorities. He claims that none of them, in fact, reached their addressees. Allegedly, he was called by the chief of the administration and threatened if he complained again. The State party has not commented on these allegations. Taking into consideration the detailed description of the conditions in prisons and the measures taken by the author, the Committee concludes that the facts before it amount to a violation by the State party of the alleged victims' rights under article 10, paragraph 1 of the Covenant.

9.4 The Committee notes the author's allegations that during his pre-trial detention he had spent more than a month in a cell with inmates categorized as particularly dangerous, despite the fact that his court trial was still pending and he was not yet convicted. The Committee further notes that in its reply to the author's allegations, the State party submitted that no procedural violations occurred in relation to his detention. It also stated that the author never raised the alleged violations during pre-trial detention at the court proceedings. The author has not

commented on this specific matter in his further submissions. In the absence of any further information the Committee cannot conclude at the existence of a violation of article 10 paragraph, 2 (a) of the Covenant.

9.5 On the alleged violation of article 14, paragraph 1, the Committee notes that the State party has rejected this allegation, concluding that no procedural violation occurred during the author's trial; according to the Criminal Procedure Code of Uzbekistan, the Samarkand City Court had a jurisdiction to examine the author's case. The author has not contested this claim in his further observations. In the absence of any further information, the Committee considers that there is no basis for finding of a violation of article 14, paragraph 1.

9.6 With respect to a claim of a violation of article 14, paragraph 3 (e), the Committee notes the State party's contention that the author and his counsel had consented to have Ms. Boichenko's statement read out in her absence. This argument has not been refuted by the author in his further comments, although in his previous submissions he had claimed that he was deprived of a right to obtain the attendance and examination of Ms. Boichenko as a witness. In the absence of any further information, the Committee cannot conclude at the existence of a violation of article 14, paragraph 3 (e).

9.7 The author has also claimed that the appeal judgement was procedurally defective as the signatures of relevant judges and the date did not appear on the judgement in violation of article 14, paragraph 5. The State Party notes that the convicted and other parties to the process receive only copies of the decision, which may not contain the signatures of all three judges. The original is signed by all judges, who participated at examination of a case. The State Party acknowledges the absence of the date on the judgement, however it argues that this cannot serve as a basis for its cancellation. The author did not contest this claim in his further observations. In the absence of any further relevant information in this respect, the Committee considers that the facts as presented do not amount to a violation of the author's rights under article 14, paragraph 5 of the Covenant.

10. 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 7 and article 10 paragraph 1 of the International Covenant on Civil and Political Rights.

11. 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 initiation and pursuit of criminal proceedings to establish responsibility for the author's ill-treatment, and payment of appropriate compensation to the author. The Committee reiterates that the State party should review its legislation and practice to ensure that all persons enjoy both equality before the law and equal protection of the law.

12. 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.]
