



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-sixth session
13 to 31 July 2009

VIEWS

Communication No. 1585/2007

<u>Submitted by:</u>	Batyrova Zoolfia (represented by counsel, Verenin S.)
<u>Alleged victim:</u>	Batyrov Zafar (author's father)
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	6 July 2007 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 15 August 2007 (not issued in document form)
<u>Date of adoption of Views:</u>	30 July 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Alleged violation of right to freedom of movement of complainant

Procedural issue: Non-substantiation of claim

Substantive issues: Rights to leave any country, including one's own; evaluation of facts and evidence.

Articles of the Covenant: 12, paragraphs 2 and 3; 14 paragraphs 1, 3 (b) and 3 (e) and 15, paragraph 1.

Articles of the Optional Protocol: 2 and 5, paragraph 2(b)

On 30 July 2009, 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.1585/2007.

[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-sixth session

Concerning

Communication No. 1585/2007*

Submitted by: Batyrova Zoolfia (represented by counsel,
Verenin S.)

Alleged victim: Batyrov Zafar (author's father)

State party: Uzbekistan

Date of communication: 6 July 2007 (initial submission)

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

Meeting on 30 July 2009,

Having concluded its consideration of communication No. 1585/2007, submitted to the Human Rights Committee on behalf of Mr. Batyrov Zafar 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. The author of the communication is Zoolfiya Batyrova, a citizen of Uzbekistan born in 1971 submitted the communication on behalf of her father Zafar Batyrov, also citizen of Uzbekistan born in 1946. The author claims that Uzbekistan violated her father's rights under article 12, paragraphs 2 and 3; article 14 paragraphs 1, 3 (b) and (e); and article 15, paragraph 1,

* The following members of the Committee participated in the examination of the present communication: Mr. Mohammed Ayat, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

of the Covenant. The Optional Protocol entered into force for the State party on 12 December 1995. She is represented by counsel, Verenin S.

The facts as presented by the author

2.1 On 25 September 2006, the author's father was convicted and sentenced to five years imprisonment under sections 184, paragraph 3, 205, paragraph 2 (a) and (b) and 223, paragraph 2 (c), of the Criminal Code of Uzbekistan, for "failing to pay taxes in particularly great amounts", "abuse of power of office, which caused a particularly severe damage" and "Illegal travelling abroad or illegal exit from the Republic of Uzbekistan".

2.2 On or about 29 May 2006, the author's father, then a manager of a public gas company as well as a deputy of the regional council of Khorezm region and a deputy of the Supreme Council of the Republic of Karakalpakstan, was sent on an official business trip to Ashgabat, Turkmenistan, to participate in negotiations over the transport of natural gas from Turkmenistan to Uzbekistan. The trip was prompted by an official invitation letter from the Turkmen government.

2.3 The author's father was then a resident of the Khorezm Province in Uzbekistan, near the Turkmen border. To attend the business meetings he crossed the border from Uzbekistan to the bordering Turkmen Dashoguz region by car, fulfilling all procedural requirements and formalities at Boundary Post 1. The author submits that there is an agreement between the two countries entitled "On movements of citizens and simplification of rules for citizens who reside in border areas", signed in 2004, which allows the citizens, residents of Khorezm and Bukhara regions of Uzbekistan to travel to and from Dashoguz and Lebap regions of Turkmenistan without visas for no more than three days once a month. The passport of the author's father bears a stamp, which could confirm that he stayed in Turkmenistan less than three days. He then used the entry visa issued by Turkmenistan to travel to Ashgabat by plane.

2.4 On 1 and 2 June 2006, the author's father participated in negotiations in Ashgabat over the transport of natural gas between the two countries, which ended with the signature of a protocol on the terms and provisions of future contracts. On 2 June 2006, the author's father returned to Dashoguz region, Turkmenistan by plane. He then crossed the border to Uzbekistan without any incidents through the same Boundary post 1 fulfilling the necessary procedures of the border control.

2.5 On 25 August 2006, the author's father was arrested and charged with illegal crossing of the Uzbek-Turkmen border with an expired Uzbek exit visa issued by the Department for Visas and Registration, and with failing to obtain consent from the Mayor of Khorezm Province and the Chair of the Supreme Council of the Republic of Karakalpakstan before leaving for Turkmenistan in alleged violation of section 223, paragraph 2 (c) of the Criminal Code of Uzbekistan. Under this provision the travel of officials abroad requires a special permission. The author argues that the section 223, paragraph 2 (c) of the Criminal Code omits any information on procedures to obtain such consent, including information on its form, terms and conditions. Therefore, she claims that when the Mayor of her father's home province was absent at the time of his departure, he arranged his departure with the Mayor's Assistant. Furthermore, his trip to Turkmenistan was for business purposes only. The author has submitted copy of a letter from the

Supreme Council of the Republic of Karakalpakstan stating that no parliamentary delegation of Karakalpakstan visited Turkmenistan in 2006.

2.6 The author claims that according to Annex 1 to the Decree of the Cabinet of Ministers No 8 of 6 January 1995 and Instruction No 760 of 1 July 1999 confirmed by the Ministry of Justice travel of Uzbekistan citizen to CIS member states, including Turkmenistan, does not require exit visa. She also invokes the terms of another agreement between Uzbekistan and Turkmenistan entitled “On the crossing of Uzbek – Turkmen border by citizens serving economic objects, located in border areas of both countries” signed in 2004, under which the citizens of one country pursuing economic objects may enter, leave and stay without visas in the territory of the border areas in both countries on the basis of permissions issued at the border by authorized state agencies and on the basis of lists of names made available in advance. The author refers to the correspondence between the Ministry of Foreign Affairs of Uzbekistan and the public gas company, which authorized her father’s business trip, and claims that such list, including the name of her father was issued according to the procedures.

2.7 The author’s father was also charged with “Evasion of tax or other payments” under section 184, paragraph 3, of the Criminal Code of Uzbekistan. Tax evasion is partly defined as “a deceit of tax organs aimed at hiding and reducing the size of obligatory deductions in favour of the state or local budget in significant amounts.” The author argues that no information obtained from investigations, be it audit reports or witness statements, offered any evidence that her father participated in any such acts.

2.8 The author’s father was also charged with “Abuse of Authority” under section 205, paragraph 2, of the Uzbek Criminal Code. Abuse of authority is defined partly as “intentional abuse of authority by an official, which causes [...] significant damage to the rights and interests of citizens or to the state and public interests.” The author argues that neither any preliminary investigation nor court investigation ever established the amount of damage caused by the author as a result of any such action.

2.9 On 25 September 2006, the author’s father was convicted under sections 184, paragraph 3, 205, paragraph 2 (a) and (b) and 223, paragraph 2 (c) of the Uzbek Criminal Code and sentenced to five years in prison by the Bagat District Court. The author complains of numerous procedural violations during the court proceedings against her father, of partiality of the trial court and of contradictions in the sentence to the facts of the case.

2.10 She claims that her father’s lawyer was not notified of the proceedings and thus could not defend her father during major parts of the proceedings, although the court had all his contact details. The lawyer learned about the start of the court proceeding from a third source. This violation was pointed out to the court by his lawyer at one of the court hearings, during which the lawyer learned that the court investigation was complete. The lawyer appealed this procedural violation and requested that the proceedings be restarted, however his appeal was rejected. Another appeal requesting to re-start the proceedings due to new circumstances, namely availability of new witnesses, was also rejected.

2.11 In addition, the author argues that her father’s lawyer was denied access to meet him in detention. The lawyer complained to the office of the Prosecutor and to the court, requesting access to the author’s father.

2.12 The author claims that there are inconsistencies and contradictions about facts and evidence in the sentence. Nine pages of defence motions and another 18 annexes were not examined by the court. The sentence did not indicate on what grounds the court rejected the evidence and documents presented by the defence. All these violations were appealed by the author's lawyer to the Regional Court of Khorezm. Prior to the beginning of the appeal hearing the lawyer requested a meeting with the author's father, which was again rejected. He did not even get permission to meet him alone before the beginning of the hearing in the court building, and only met him during the hearing. His request was denied by the chair of the Court collegium which examined the case.

2.13 The author submits that during the appeal hearing, the lawyer pointed out procedural violations during the trial in the District Court. The appeal court rejected the claims and confirmed the sentence of the Bagat District Court. The lawyer then appealed to the Khorezm Regional Court to lodge an objection under supervisory review, which was rejected on 28 November 2006. His following appeal to the Supreme Court under supervisory review was rejected on 16 March 2007.

2.14 On 30 November 2006, the Uzbek Parliament issued a decree entitled "On pardon in connection with the 14th anniversary of Uzbekistan's independence". The pardon was not applied to the author's father, despite the fact that he reached 60 by the time the decree was issued and should have benefited according to the criteria established. The lawyer appealed to the Main Department on Enforcement of Sentences and Bagat District Court requesting to clarify the reasons why the pardon was not applied to the author. No response has been received.

The complaint

3.1 The author claims that her father was convicted illegally for travelling abroad on business, which did not constitute a threat to national security, public order, public health or morals or the rights and freedoms of others, in violation of his rights under article 12, paragraphs 2 and 3 of the Covenant.

3.2 The author submits that inconsistencies and contradictions about facts and evidence in the sentence as well as non examination of defence motions by the courts amount to violation of article 14 paragraphs 1 of the Covenant.

3.3 The author also claims that her father's lawyer was not notified of the proceedings and thus could not defend her father during major parts of the court proceedings and was denied access to meet him in detention in violation of article 14, paragraph 3 (b). She claims that denial of the lawyer's request to invite additional witnesses amount to violation of article 14, paragraph 3 (e) of the Covenant.

3.4 The author argues that her father was found guilty for acts that did not constitute a crime in violation of article 15, paragraph 1.

State party's observations on admissibility and merits

4.1 In its submission dated 15 October 2007, the State party reiterates the facts as presented by the author and submits that the author's father's guilt was established on the basis of evidence

that was obtained during the investigation process and corroborated during the court proceedings. It argues that the author's actions were evaluated correctly and the sentence determined according to the law.

4.2 It further provides subsequent facts to his case that on 20 August 2007, the Tashkent City Criminal Court handed down another sentence convicting the author's father under sections 167, paragraph 3 (a) and (b) on embezzlement or misappropriation; 179 on false entrepreneurship; 205, paragraph 2 (a),(b) and (c) on abuse of authority and of official powers; 209, paragraph 2, (a) and (b) on falsification of documents; 210, paragraph 3 (a), (b) and (c) on taking bribe; and 242, paragraph 1 on organization of criminal conspiracy, of the Criminal Code and under article 59 of the Criminal Code of the State party sentenced him to 12 years and 6 months of imprisonment. The State party submits that by linking and combining the sentence, issued on 25 December 2006 and 20 August 2007, the author was sentenced to 13 years' imprisonment. According to the decree on Pardon of 30 November 2006, the length of the sentence was later reduced by one fourth.

Author's comments on State party's observations

5.1 In comments dated 10 December 2007, the author submits that the observations of the State party do not refute but prove the absence of any crime on her father's part. She submits that none of the claims of violations of the Covenant have been refuted by the State party.

5.2 The author submits that the second criminal case examined by the Tashkent Criminal Court was merely an attempt to correct the mistakes of the investigation and of the court proceedings in the first case. During the pre trial investigation for the second criminal case, her father's lawyer filed numerous complaints about breaches of procedure in the collection and evaluation of evidence, and violations of his defence rights. All these complaints were ignored.

5.3 She submits that before the beginning of the second trial, the Judicial Division of the Tashkent City Court ignored the petitions presented by her father's lawyer to invite one more lawyer. The criminal case against her father was not examined in substance during the trial. The author provides a list of examples related to each section, in which the court did not accept or examine testimonies and other documentary evidence. If the amount of material damage caused by her father was so great, why then there were no civil claims for these amounts from anyone? Requests to invite witnesses whose testimonies would have been essential in his case were all rejected. At the same time, none of the requests made by the prosecution side were rejected.

5.4 The author adds that the protocol of court proceedings was issued 14 days after the sentence was issued. This allowed for falsification and additions to the protocol, as it contained many inaccuracies. The author submitted a note to the protocol of court proceedings to the Tashkent Municipal Court for Criminal Cases.

5.5 She adds that the allegations above also amount to violations of articles 6, 7, 10, article 14, paragraphs 2, 3 (d) of the Covenant.

Author's further submissions:

6. On 21 March 2009, the author submits that the health condition of her father has significantly deteriorated. He has been kept under ambulatory observation at the Cardiologic Centre and was diagnosed with "Ischemic Heart Disease of Arrhythmic form and Ciliary Arrhythmia of Paroxysmal Form." The author's father had been diagnosed with hypertension of 1st degree in 2003 in addition to cardiac diseases and benign prostate gland hyperplasia. In 2005, hypertension reached the second degree. In July 2007, in prison, prison medical staff confirmed Ischemic Heart Disease, Stenocardia Stabile FK'2, Paroxysmal Ciliary Arrhythmia and Hypertension of the second degree. In addition, they diagnosed pancreatic diabetes of the 2nd type. The author claims that these diagnoses show that her father's life is at risk, if no preventive measures are taken on time. She requests the Committee to accelerate examination of the case to avoid irreparable damage.

Issues and proceedings before the Committee**Consideration of 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. It also notes that the State party has not contested that domestic remedies have been exhausted in the case.

7.3 The Committee has noted that the author's allegations about the manner in which the courts handled her father's case, assessed evidence, qualified his alleged criminal acts, and determined his guilt, which are said to raise issues under article 14, paragraphs 1, 3 (b) and 3 (e), 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 justice¹. In the absence of any other pertinent information, the Committee considers that this part of the communication has been insufficiently substantiated, for purposes of admissibility, under article 2 of the Optional Protocol.

7.4 The Committee notes the author's claims that her father's right under articles 15, paragraph 1, of the Covenant was violated. However, the author does not provide sufficient information to illustrate her claims in this respect. Accordingly, this part of the communication is deemed inadmissible, as insufficiently substantiated, for purposes of admissibility, under article 2 of the Optional Protocol.

¹ See, *inter alia*, Communication No. 541/1993, Errol Simms v. Jamaica, inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

7.5 The Committee has further noted that in one of her latest submissions the author also claimed violations of articles 6, 7, 10, article 14, paragraphs 2 and 3 (d), of the Covenant, which have not been raised before. It considers that the author has not provided sufficient information to substantiate these additional claims. The Committee considers that this part of the communication is inadmissible under article 2 of the Optional Protocol, for lack of substantiation.

7.6 The Committee considers that the author's remaining allegations, which appear to raise issues under article 12, paragraphs 2 and 3, of the Covenant, have been sufficiently substantiated, for purposes of admissibility, and declares them admissible.

Consideration of 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 Committee notes the author's claim that her father's right to leave any country, including his own, under article 12, paragraphs 2 and 3, was violated. The Committee notes that the State party has not refuted the author's allegations but merely stated that the charges were based on evidence obtained during the investigation process and verified in court proceedings.

8.3 The Committee recalls its General Comment 27 on article 12, where it stated that the liberty of movement is indispensable condition for the free development of an individual. It however also recalls that the rights under article 12 are not absolute. Paragraph 3 of article 12 provides for exceptional cases in which the exercise of rights covered by article 12 may be restricted. In accordance with the provisions of that paragraph, a State party may restrict the exercise of those rights only if the restrictions are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in Covenant. In General Comment 27, the Committee noted that "it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them" and that "restrictive measures must confirm to the principle of proportionality; they must be appropriate to achieve their protective function." In the present case, however, the State party has not provided any such information that would point to the necessity of the restriction nor justify it in terms of its proportionality. In these circumstances the Committee concludes that there has been a violation of article 12, paragraphs 2 and 3 of the Covenant.

9. 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 12, paragraphs 2 and 3, of the International Covenant on Civil and Political Rights.

10. 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 compensation, as well as to amend its legislation concerning exit from the country to comply with the provisions of the Covenant. 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 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.]
