



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-third session
14 March – 1 April 2004

VIEWS

Communication No. 971/2001

Submitted by: Irina Arutyuniantz (not represented by counsel)

Illeged victim: Vazgen Arutyuniantz, the author's son

State Party: Uzbekistan

Date of communication: 18 December 2000 (initial submission)

Document references: Special Rapporteur's rule 92/97 (old rule 86/91) decision, transmitted to the State party on 27 April 2001 (not issued in document form)

Date of adoption of Views: 30 March 2005

Subject matter: Conviction based on testimony of alleged accomplice; failure of court positively to determine who the murderer(s) was.

Substantive issues: Presumption of innocence.

Procedural issues: None

Articles of the Covenant: 14(2)

Articles of the Optional Protocol: 4(2), 5(2)(b)

On 30 March 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 971/2001. The text of the Views is appended to the present document.

[ANNEX]

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- Made public by decision of the Human Rights Committee.

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-third session

concerning

Communication No. 971/2001**

Submitted by: Irina Arutyuniantz (not represented by counsel)

Alleged victim: Vazgen Arutyuniantz, the author's son

State Party: Uzbekistan

Date of communication: 18 December 2000 (initial submission)

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

Meeting on 30 March 2005,

Having concluded its consideration of communication No. 971/2001, submitted to the
Human Rights Committee on behalf of Vazgen Arutyuniantz 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 Irina Arutyuniantz, a citizen of Uzbekistan born in 1952. She submits the
communication on behalf of her son, Vazgen Arutyuniantz, also an Uzbek citizen, born 1977,
currently imprisoned in the city of Andijan in Uzbekistan. She claims that her son is a victim
of violations by Uzbekistan of articles 6, 7, 14 paragraphs 2, 3(g) and 16 of the International
Covenant on Civil and Political Rights¹. She is not represented by counsel.

1.2 The Covenant and the Optional Protocol entered into force for Uzbekistan on 28
December 1995.

** The following members of the Committee participated in the examination of the present
communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal
Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil,
Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley,
Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, and Mr. Roman Wieruszewski.

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

Factual background

2.1 On 31 May 2000, Vazgen Arutyuniantz and another man, Armen Garushyantz, were convicted in the Military Court in Tashkent² of the aggravated murder of two people and of burgling their apartments; they were sentenced to death. The Court found that in January 1999, the two men had visited the apartment of one of the victims, to whom they owed money, and killed her by striking her with a hammer, and then burgled her apartment. It found that in March 1999, the pair had also killed another man by striking him several times on the head with a hammer, and then burgled his apartment. The author states that her son admitted to being present at the scene of each of the two murders, and to robbery, but maintains his innocence in relation to the two murders.

2.2 The author states that her son's trial was unfair and that he was unjustly convicted of murder. His conviction was based on the testimony of his alleged accomplice, Garushyantz, who changed his testimony several times. When he was arrested, Garushyantz said that Arutyuniantz, who then was still at large, had committed the two murders. After Arutyuniantz was apprehended, Garushyantz admitted that he had lied about Arutyuniantz committing the murders, in the hope that Arutyuniantz would not be apprehended and therefore offer no contradictory testimony. Then in Court, fearing a possible death sentence, Garushyantz again changed his testimony, this time claiming that Arutyuniantz had killed the first victim, but that he had killed the second. Despite these inconsistencies, the testimony of Garushyantz was the basis of her son's conviction for murder.

2.3 The author states there was no evidence and no judicial conclusion as to whether it was in fact Arutyuniantz or his accomplice who killed one or both of the victims, despite the requirements of Supreme Court Order Number 10, which requires that in cases of crimes allegedly committed by a group of people, the Court must ascertain who played what role in the crime. The decision of the court simply states that '*Garushyantz and Arutyuniantz struck (the victims) with a hammer*', and there was no consideration of precisely who struck the blows with the hammer. The author claims that in such circumstances her son's right to be presumed innocent until proved guilty was violated. The author states that the Court approached the trial with a predisposition towards conviction, and that it upheld each and every accusation leveled against her son under the Criminal Code, even though some plainly had no application. Thus, her son was charged with the killing of two or more persons under article 97 of the Criminal Code which, according to the author, only applies where the murders in question occur simultaneously. She further claims that there was no evidence of the murders being committed in aggravating circumstances, as found by the Court. She submits that the Court's decision simply replicated the indictment, and that this is further indication of the Court's lack of objectivity.

2.4 The author states that her son was severely beaten after his arrest by the police for the purpose of extracting a confession about his alleged participation in the murders. That her son was beaten was established by a medical examination conducted by the Ministry of Defence on 12 July 1999. She notes that after her husband went to visit her son in detention, he came back in a state of shock, as her son was black from bruising. He told his father that his

² It transpires from the file that the author's co-defendant had been in the armed services until 1998, when he deserted; no particular claim was made by the author on the fact that her son was judged by a Military Court.

kidneys were very sore, he was urinating blood, had headaches and was unable to stand on his heels. The investigator allegedly told her husband that their son was a murderer and that he would be shot. In a message sent to his parents from his cell, he implored them to help him, and said that he was being beaten, but refused to confess because he was not a murderer. The author states that in October 1999, in despair over his son's situation, her husband committed suicide.

2.5 Mr. Arutyuniantz appealed to the Supreme Court complaining about the above matter, with the exception of the allegation of being severely beaten. On 6 October 2000, the appeal against his murder conviction was dismissed.

The complaint

3. The author claims that her son's trial and ill-treatment whilst in custody gives rise to violations of articles 6, 7, 14 paragraphs 2 and 3(g), and article 16 of the Covenant.

The state party's observations on admissibility and merits

4.1 By note dated 13 January 2005, the State party submitted that on 28 December 2001, the Supreme Court issued an order commuting Arutyuniantz's death sentence to a term of 20 years' imprisonment. Further to presidential 'amnesty decrees' dated 28 December 2000, 22 August 2001 and 3 December 2002, Mr. Arutyuniantz's sentence was reduced to 9 years, 4 months and 22 days; he was not eligible to benefit from further amnesty decrees issued on 1 December 2003 and 1 December 2004, because he had violated prison rules.

4.2 The State party submits that the preliminary investigation into the crimes for which Mr. Arutyuniantz was convicted was conducted in accordance with the Uzbek Criminal Procedure Code, and that all charges and evidence were thoroughly assessed. It submits that Arutyuniantz's guilt was found to be substantiated, and contends that the communication is both inadmissible and without merit.

Issues and proceedings before the Committee

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 case is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 The Committee notes that the author's claim under article 16 has not been substantiated, as there is no information on file which suggests that the author's son was denied recognition as a person before the law. Further, in view of the commutation of Mr Arutyuniantz's death sentence, there is no longer any factual basis for the author's claim under article 6 of the Covenant. Accordingly, the Committee finds that these claims have not been substantiated, and are therefore inadmissible under article 2 of the Optional Protocol.

5.4 In relation to the author's claims that her son's rights under articles 7 and 14, paragraph (3)(g) were violated, the Committee notes that these matters were not raised by the author's

son in his appeal to the Supreme Court. The Committee has not been provided with any information to the effect that the author complained about his alleged mistreatment at the hands of the police to the State party's authorities. The Committee reiterates that the requirement that an author exhaust domestic remedies attaches to *each* allegation of an alleged violation of the Covenant, not simply to the decision of a court or tribunal unfavourable to an author. Accordingly, the Committee considers that the author's claims in relation to violations of articles 7 and 14, paragraph (3)(g) of the Covenant are inadmissible under article 5, paragraph (2)(b) of the Optional Protocol.

5.5 The Committee considers there to be no impediment to the admissibility of the author's remaining claim under article 14(2), and proceeds to consider it on the merits.

Consideration of the merits

6.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol. It notes that, whilst the State party has provided comments on the author's case and conviction, including information about the commutation of the death sentence, it has not provided any information about the claims made by the author. The State party merely contends that Mr Arutyuniantz was tried and convicted in compliance with Uzbek laws, that the charges and evidence were thoroughly assessed, that his guilt was proved, and that the communication is both inadmissible and without merit.

6.2 In relation to the author's claim that her son was not presumed innocent until proved guilty, the author has made detailed submissions which the State party has not addressed. The Committee recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol that a State party should examine in good faith all allegations brought against it, and should provide the Committee with all relevant information at its disposal. The Committee does not consider that a general statement about the adequacy of the criminal proceedings in question meets this obligation. In such circumstances, due weight must be given to the author's allegations, to the extent that they have been substantiated.

6.3 The author points to a number of circumstances which she claims demonstrate that her son did not benefit from the presumption of innocence. She states that her son's conviction was based on the testimony of an accomplice who changed his evidence on several occasions, and who at one point confessed to the having committed the murders himself and having falsely implicated Arutyuniantz. She also states that the trial court never made a positive finding of who murdered the two victims; the decision refers to both accused striking and killing the victims with a single hammer.

6.4 The Committee also recalls its General Comment No 13, which reiterates that by reason of the principle of presumption of innocence, the burden of proof for any criminal charge is on the prosecution, and the accused must have the benefit of the doubt. His guilt cannot be presumed until the charge has been proved beyond reasonable doubt. From the information before the Committee, which has not been challenged in substance by the State party, it transpires that the charges and the evidence against the author left room for considerable doubt. Incriminating evidence against a person provided by an accomplice charged with the same crime should, in the Committee's opinion, be treated with caution, particularly in circumstances where the accomplice has changed his account of the facts on several occasions. There is no information before the Committee that, despite their having being

raised by the author's son, the trial court or the Supreme Court took these matters into account.

6.5 The Committee is mindful of its jurisprudence that it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, or to examine the interpretation of domestic legislation by national courts and tribunals, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or amounted to a denial of justice.³ For the reasons set out above, the Committee considers that the author's trial in the present case suffered from such defects.

6.6 In the absence of any explanation from the State party, the above concerns raise considerable doubt as to the author's son's guilt in relation to the murders for which he was convicted. From the material available to it, the Committee considers that Mr Arutyuniantz was not afforded the benefit of this doubt in the criminal proceedings against him. In the circumstances, the Committee concludes that the author's trial did not respect the principle of presumption of innocence, in violation of article 14(2).

7. 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 violations of article 14(2) of the Covenant.

8. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee considers that the author is entitled to an appropriate remedy, including compensation and either his re-trial or his release.

9. By becoming a State 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; pursuant to article 2 of the Covenant, the State party has undertaken to ensure 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 cases where 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.]

³ See Communication No.842/1998, *Romanov v Ukraine*, inadmissibility decision of 30 October 2003.