



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-first session
5 - 30 July 2004

VIEWS

Communication No. 964/2001

Submitted by: Mrs. Barno Saidova (not represented by counsel)

Alleged victim: The author's husband, Mr. Gaibullodzhon Ilyasovich Saidov, deceased.

State party: Tajikistan

Date of communication: 11 January 2001 (initial submission)

Document references: Special Rapporteur's rule 86/91 decision, transmitted to the State party on 12 January 2001 (not issued in document form)

Date of adoption of Views: 8 July 2004

On 8 July 2004, 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. 964/2001. The text of the Views is appended to the present document.

[ANNEX]

* 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-first session

concerning

Communication No. 964/2001**

Submitted by: Mrs. Barno Saidova (not represented by counsel)

Alleged victim: The author's husband, Mr. Gaibullodzhon Ilyasovich Saidov, deceased.

State party: Tajikistan

Date of communication: 11 January 2001 (initial submission)

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

Meeting on 8 July 2004,

Having concluded its consideration of communication No. 964/2001, submitted to the Human Rights Committee by Mrs. Barno Saidova 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,

Adopts the following:

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

1.1 The author of the communication is Mrs. Barno Saidova, a Tajik national born in 1958. She submits the communication on behalf of her husband – Gaibullodzhon Saidov, also Tajik national, born in 1954 and who, at the time of submission of the communication was detained on

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

death row and awaited execution after being sentenced to death by the Military Chamber of the Supreme Court of Tajikistan on 24 December 1999. She claims that her husband is a victim of violations by Tajikistan of articles 6, paragraphs 1 and 2; 7; 9, paragraph 2; 10, paragraph 1; and 14, paragraphs 1, 2, 3 (b), (d), and (g), and 5, of the International Covenant on Civil and Political Rights¹. The author is not represented by counsel.

1.2 On 12 January 2001, in accordance with rule 86 of its rules of procedure, the Human Rights Committee, acting through its Special Rapporteur for New Communications, requested the State party not to carry out the death sentence against Mr. Saidov while his case was pending before the Committee. No reply was received from the State party in this regard. From the author's subsequent submissions, it transpired that Mr. Saidov was executed on 4 April 2001.

The facts as presented by the author

2.1 According to the author, on 4 November 1998, approximately 600 armed combatants who were based in Uzbekistan but of Tajik origin supported one colonel Khudoberdiev and infiltrated the Leninabad region in Tajikistan. After occupying several official buildings in the area, they requested an amnesty for all of Khudoberdiev's collaborators, and their safe return in Tajikistan.

2.2 The same day, Mr. Saidov, who lived in Khukhandzh, in the invaded region and was a driver, became acquainted with some of the combatants. He decided to drive several injured combatants to the hospital and to bury victims of the fighting between the followers of Kudoberdiev and governmental troops. Mr. Saidov was armed.

2.3 On 7 November 1998, the combatants began to retreat towards Uzbekistan. Mr. Saidov went to the Kyrgyz border, where he was arrested by the Tajik authorities on 25 November 1998. According to the author, her husband, along with other individuals arrested in the so-called "November events", was beaten to make him confess. The author was allowed to see her husband in the police station one week after his arrest. During her visit, she noted that he had been beaten and that his body bore black and blue bruises. He had a bruise on top of his right eyebrow, on his thorax, his legs were swollen, and he was unable to stand; during one month he secreted blood, because of internal injuries. Allegedly, no medical doctor visited him. The author contends that her husband was threatened that his wife and daughter would suffer if he refused to confess guilt. Another individual arrested in the same context was allegedly shot in the foot, to make him confess.

2.4 According to the author, during the month following the arrest, the national television constantly broadcast press conferences featuring those who had "repented" after their arrest, who bore signs of beatings. Her husband was also shown, and the scar on his right eyebrow was visible. According to the author, Mr. Saidov's general health status deteriorated as a consequence of the beatings, in particular his eyesight.

2.5 Although Mr. Saidov's arrest took place on 25 November 1998, he was officially charged only on 1 January 1999. He was not informed of his right to legal representation upon arrest. The

¹ The Optional Protocol entered into force for Tajikistan on 4 April 1999.

author was the only family member who was allowed to see him few times. Her husband's lawyer was not chosen by the victim but was assigned to him by an investigator and appeared only in about mid-March 1999. According to the author, he only met once with Mr. Saidov, during the investigation.

2.6 The trial started in June 1999. The Military Chamber of the Supreme Court, sitting in Military Unit 3501 in Khudzhand. The hearing took place in a meeting room with broken windows. No mention of the secret nature of the trial or of any limitation for the public appears in the court's decision, according to the author, but a list was prepared and only one family member per accused was admitted into the courtroom.

2.7 The victim's lawyer was often absent during the trial and many of Mr. Saidov's interrogations took place in his absence; the lawyer was also absent when the judgment was delivered.

2.8 According to the author, all of the accused, including her husband, declared in court that during the investigation they were beaten and threatened to force them to confess or to testify against themselves or against each other. However, the Court ignored these declarations and did not proceed to verify them. According to the author, the presiding judge had decided to convict the accused by the time of the opening of the trial; for that reason, he allegedly conducted the trial in an "accusatory manner".

2.9 The author claims that her husband was detained in the Khudzhand District Police building from 25 November 1998 to 12 January 1999, although an arrested person was supposed to be kept there only for a maximum period of three days. On 12 January 1999, Mr. Saidov was transferred to the investigation centre no1 in Khudzhand and placed in a collective cell with 16 other detainees; the air circulation was insufficient and the cell was overcrowded. The food consisted exclusively of barley gruel; as her husband suffered from viral hepatitis before his arrest, he could not digest the food provided in the detention centre and he required a special diet, but was unable to obtain one. As result, her husband's stomach was injured and he was obliged to consume only the food transmitted infrequently by his family.

2.10 On 24 December 1999, the Supreme Court found Mr. Saidov guilty of banditism; participation in a criminal organization; usurpation of power with use of violence; public call for forced modification of the constitutional order; illegal acquisition and storing of fire guns and munitions, terrorism and murder, and sentenced him to death. The same day, he was transferred to death row, and placed in an individual cell measuring one by two meters, with concrete floor with no bed but a thin mattress. The toilet consisted of a bucket in one of the corners. According to the author, her husband, a practicing Muslim, was humiliated to have to pray in such conditions. On 25 June 2000, Mr. Saidov was transferred to Detention Centre SIZO No 1 in Dushanbe, where, allegedly, conditions of detention and quality of food were identical. The author claims that her husband received only every fourth parcel she sent to him through the penitentiary authorities.

2.11 The author states that she and Mr. Saidov's lawyer appealed the Supreme Court decision to the President of the Supreme Court of Tajikistan. The Deputy President of the Supreme Court

(and Chairman of the Military Chamber of the same Court) dismissed the appeal on an unspecified date. The mother of Mr. Saidov addressed a request for pardon to the President but received no reply. Mr. Saidov's lawyer introduced a request for pardon to the presidency's Committee for the Defense of the Citizen's Constitutional Rights, but did not receive a reply either.

2.12 On 10 May 2001, the author informed the Committee that her husband was executed on 4 April 2001, despite of the Committee's request for interim measures of protection. On 12 June 2001, she submitted a copy of the death certificate, issued on 18 May 2001, which confirmed that Mr. Saidov passed away on 4 April 2001, without mentioning the cause of death.

The claim

3.1 The author claims that her husband was a victim of violations of his rights under article 7 of the Covenant, as during the investigation, in particular during the two weeks following his arrest, he was tortured by the investigators in order to make him confess, in violation of article 14, paragraph 3 (g). When, in court, he and other accused challenged the voluntary character of the confessions they made during the investigation, the judge, allegedly cut them short, stating that they were inventing things and asking them "tell the truth".

3.2 The author claims that article 9, paragraph 2, was violated in her husband's case, as he was arrested on 25 November 1998 but only officially charged one month later, on 1 January 1999.

3.3 Article 10, paragraph 1, of the Covenant is said to have been violated due to the inhuman conditions of detention of Mr. Saidov in Khudzhand and Dushanbe.

3.4 Article 14, paragraph 1, is said to have been violated, because the judge of the Military Chamber of the Supreme Court conducted the trial in a biased manner and imposed limitations on the access of relatives of the accused to the hearing, as well as denying access to other individuals wishing to assist, thus violating the requirement of publicity of the trial. Although not directly invoked by the author, another issue possibly arises under the above provision, in that Mr. Saidov, a civilian, was sentenced by the Military Chamber of the Supreme Court.

3.5 Mr. Saidov's presumption of innocence, protected by article 14, paragraph 2, is also said to have been violated, because during the investigation, state directed national media constantly broadcast and published material, calling him and his co-accused "criminals", "mutineers", etc, thus contributing to a negative public opinion. Later, during the trial, this resulted in the judge's accusatory approach.

3.6 Article 14, paragraph 3 (b) is said to have been violated, because during the investigation, Mr. Saidov was deprived, de facto, of his right to legal representation, in spite of the fact that he risked a capital verdict. A lawyer was assigned by investigators only during the final stages of the investigation and Mr. Saidov met him only once, allegedly in violation of his right to prepare his defense. The author also claims that article 14, paragraph 3 (d) has been violated, as her

husband was not informed of his right to be represented by a lawyer from the moment of his arrest. Finally, during the trial, Mr. Saidov's lawyer was frequently absent.

3.7 Mr. Saidov was tried and found guilty by the Military Chamber of the Supreme Court, whose judgments are not subject to ordinary appeal, in violation of article 14, paragraph 5, of the Covenant. The only possible appeal is an extraordinary one and depends on the discretionary power of the President of the Supreme Court (or his deputies), or the Prosecutor General (or his deputies). The author considers that this system deprived her husband of his right of appeal, in violation of the principles of equality of arms and adversary proceedings, by giving an unfair advantage to the prosecutor's side. The author adds that even if an extraordinary appeal was to be submitted, takes place, it is always conducted without hearing and would only cover matters of law, contrary to the Committee's jurisprudence².

3.8 The author contends that the above violations led to a violation of her husband's rights under article 6, paragraphs 1 and 2, as he was sentenced to death after an unfair trial, on the ground of a confession extracted under torture.

3.9 In spite of several reminders addressed to the State party with requests to present its observations on the author's submission³, and with requests for clarification of Mr. Saidov's situation, no reply has been received.

State party's failure to respect the Committee's request for interim measures under rule 86

4.1 The author has alleged that the State party breached its obligations under the Optional Protocol by executing her husband despite the fact that a communication had been registered before the Human Rights Committee under the Optional Protocol and a request for interim measures of protection had been addressed to the State party in this respect. The Committee recalls⁴ 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 (Preamble and article 1). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the

² The author refers to the Committee's Views in the cases of Domukovsky and al. v. Georgia, Communications No. 623-627/1995, adopted on 6 April 1998.

³ The initial rule 86 request was addressed to the State party on 12 January 2001. A Note verbale was sent to the State party on 18 May 2001, requesting information on Mr. Saidov's situation and reiterating the rule 86 request. A letter, signed by the Committee's Chairperson was addressed to the State party on 19 June 2001, with a request for clarification on the non-compliance with the rule 86 request. Finally, on 3 August 2001, a Note verbale was addressed to the State party, requesting it to provide information on the case (what steps were taken by the State to comply with the Committee's rule 86 request, on what grounds Mr. Saidov was executed, and what measures are being taken by the state to guarantee compliance with such requests in future. On 5 December 2002, the State party was invited to provide the above requested information.

⁴ See Piandong v. the Philippines, Communication No. 869/1999, Views adopted on 19 October 2000.

Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual (article 5 (1), (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 Views.

4.2 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 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 communication, the author alleges that her husband was denied rights under Articles 6, 7, 9, 10 and 14 of the Covenant. Having been notified of the communication, the State party has breached its obligations under the Protocol, by executing the alleged victim before the Committee concluded its consideration and examination and the formulation and communication of its Views. It is particularly inexcusable for the State to having done so after the Committee has acted under rule 86 of its Rules of Procedure, requesting that the State party refrains from doing so.

4.3 The Committee also expresses great concern about the lack of State party's explanation for its action, in spite of several requests made in this relation by the Committee, acting through its Chairman and its Special Rapporteur on New Communications.

4.4 The Committee recalls that interim measures pursuant to rule 86 of the Committee's 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 the present case, the execution of the author's husband undermines the protection of Covenant rights through the Optional Protocol.

Issues and proceedings before the Committee

Committee's decision on admissibility

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

5.2 The Committee notes that the same matter is not being examined under any other international procedure of investigation and settlement, and that available domestic remedies have been exhausted on the strength on the material before it. In the absence of any State party's objection in this regard, it considers that the conditions set forth in paragraphs 2 (a) and (b) of article 5 of the Optional Protocol are satisfied.

5.3 The Committee has noted the author's claims under articles 6, 7, 9, 10, and 14, set out above, and has noted that the author's allegations in relation to the initial stages of Mr. Saidov's investigation relate to a period prior to the entry into force of the Optional Protocol for the State party. The author's case, however, was examined by a court, in first instance, only on 24

December 1999 – i.e. after the entry into force of the Optional Protocol for Tajikistan. In the circumstances, the Committee finds that the alleged violations of the Covenant had or continued to have effects that in themselves constituted possible violations after the entry into force of the Optional Protocol and are therefore admissible, except the allegations under article 9, which do not fall into that category, and therefore are inadmissible under article 1 of the Optional Protocol.

Examination 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 required under article 5, paragraph 1, of the Optional Protocol. It notes that the State party has not, despite the reminders sent to it, provided any replies on either the admissibility or the merits of the communication. The Committee notes that, under article 4, paragraph 2, of the Optional Protocol, a State party is under an obligation to cooperate by submitting to it written explanations or statements clarifying the matter and indicating the measures, if any, that may have been taken to remedy the situation. As the State party has failed to cooperate in that regard, the Committee had no choice but to give the author's allegations their full weight insofar as they have been substantiated

6.2 With regard to the claim that the author's husband was tortured and threatened following his arrest to make him confess, the Committee notes that the author has provided the names of the officials who beat her husband, using baton and kicks, and has described in some details her husband's resulting injuries. From the documents submitted by the author, it transpires that these allegations were presented to the President of the Supreme Court on 7 April 2000, and that he responded that the allegations had already been examined by the Military Chamber of the Supreme Court and were found to be groundless. The author argues that her husband and his co-accused revoked their initial confessions in court, having been extracted under torture; this challenge to the voluntariness of the confessions was dismissed by the judge. The Committee notes that the State party has failed to indicate how the court investigated these allegations, nor has it provided copies of any medical reports in this respect. In the circumstances, due weight must be given to the author's claim, and the Committee considers that the facts as submitted disclose a violation of article 7 of the Covenant.

6.3 In the light of the above finding and of the fact that Mr. Saidov's conviction was based on his confession obtained under duress, the Committee concludes that article 14, paragraph 3 (g), of the Covenant, was also violated.

6.4 The Committee has taken note of the author's claims under article 10, paragraph 1, of the Covenant, relating to her husband's detention subsequent to the entry into force of the Optional Protocol during the investigation and on death row, due to the lack of medical assistance and the poor conditions of detention as exposed in paragraphs 2.9 and 2.10 above. In the absence of any State party's refutation, once again, due weight must be given to the author's allegations. Accordingly, the Committee concludes that article 10, paragraph 1, has been violated with Mr. Saidov's respect.

6.5 The Committee has noted that the author's husband was unable to appeal his conviction and sentence by way of an ordinary appeal, because the law provides that a review of judgments

of the Military Chamber of the Supreme Court is at the discretion of a limited number of high-level judicial officers. Such review, if granted, takes place without a hearing and is allowed on questions of law only. The Committee recalls that even if a system of appeal may not be automatic, the right to appeal under article 14, paragraph 5, imposes on the State party a duty substantially to review, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, as long as the procedure allows for due consideration of the nature of the case⁵. In the absence of any explanation from the State party in this regard, the Committee is of the opinion that the above -mentioned review of judgments of the Military Chamber of the Supreme Court, falls short of the requirements of article 14, paragraph 5, of the Covenant, and consequently, that there has been a violation of this provision in Mr. Saidov's case⁶.

6.6 The author further claimed that her husband's right to be presumed innocent until proved guilty has been violated, due to the extensive and adverse pre-trial coverage by state – directed media which designated the author and his co-charged as criminals, thereby negatively influencing the subsequent court proceedings. In the absence of information or objection from the State party in this respect, the Committee decides that due weight must be given to the author's allegations, and concludes that Mr. Saidov's rights under article 14, paragraph 2, have been violated.

6.7 The Committee has noted the author's claim that her husband's right to a fair trial was violated, inter alia by the fact that the judge conducted the trial in a biased manner and refused even to consider the revocation of the confessions made by Mr. Saidov during the investigation. No explanation was provided by the State party for the reasons of that situation. Therefore, on the basis on the strength of the material before it, the Committee concludes that the facts as submitted before it reveal a violation of Mr. Saidov's rights under article 14, paragraph 1, of the Covenant.

6.8 As to the alleged violation of article 14, paragraph 3 (b), in that the author's husband was legally represented only towards the end of the investigation and not by counsel of his own choice, with no opportunity to consult his representative, and that, contrary to article 14, paragraph 3 (d), Mr. Saidov was not informed of his right to be represented by a lawyer upon arrest, and that his lawyer was frequently absent during the trial, the Committee once more regrets the absence of a relevant State party explanation. It recalls its jurisprudence that, particularly in cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer⁷ at all stages of the proceedings. In the present case, the author's husband faced several charges which carried the death penalty, without any effective legal defence, although a lawyer had been assigned to him by the investigator. It remains unclear from the material before the Committee whether the author or her husband have requested a private lawyer, or have contested the choice of the assigned lawyer. However, and in the absence of any

⁵ See Reid v Jamaica, Communication No. 355/1989, paragraph 14.3, and Lumley v. Jamaica, Communication No. 662/1995, paragraph 7.3 .

⁶ See Domukovsky and al. v. Georgia, Communications No. 623-627/1995.

⁷ See for example Aliiev v Ukraine, Communication 781/1997, Robinson v. Jamaica, Communication No. 223/1987, Brown v. Jamaica, Communication No. 775/1997.

relevant State party explanation on this issue, the Committee reiterates that while article 14, paragraph 3 (d) does not entitle an accused to choose counsel free of charge, steps must be taken to ensure that counsel, once assigned, provides effective representation in the interest of justice⁸. Accordingly, the Committee is of the view that the facts before it reveal a violation of Mr. Saidov's rights under article 14, paragraphs 3 (b) and (d), of the Covenant.

6.9 The Committee recalls⁹ 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 current case, the sentence of death was passed, and subsequently carried out, in violation of the right to a fair trial as set out in article 14 of the Covenant, and therefore also in violation of article 6 of the Covenant.

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 a violation of Mr. Saidov's rights under articles 6, 7, 10, paragraph 1, and 14, paragraphs 1, 2, 3 (b), (d), and (g), and 5, of the Covenant.

8. Under article 2, paragraph 3 (a), of the Covenant, the author is entitled to an effective remedy, including compensation. The State party is under an obligation to take measures to prevent similar violations in the future.

9. 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 these Views. The State party is also requested to publish the Committee's Views.

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

⁸ See, inter alia, Kelly v. Jamaica, Communication No. 253/1987.

⁹ See Conroy Levy v. Jamaica, Communication No. 719/1996, and Clarence Marshall v. Jamaica, Communication No. 730/1996, Kurbanov v. Tajikistan, Communication No. 1096/2002.