



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eightieth session
15 March - 2 April 2004

VIEWS

Communication No. 917/2000

Submitted by: Ms. Karina Arutyunyan (not represented by counsel)

Alleged victim: Mr. Arsen Arutyunyan

State party: Uzbekistan

Date of communication: 7 March 2000 (initial submission)

Document references: Special Rapporteur's rule 86/91 decision, transmitted to the State party on 22 March 2000 (not issued in document form)

Date of adoption of Views: 29 March 2004

On 29 March 2004, the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 917/2000. 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

Eightieth session

concerning

Communication No. 917/2000**

Submitted by: Ms. Karina Arutyunyan (not represented by counsel)
Alleged victim: Mr. Arsen Arutyunyan
State party: Uzbekistan
Date of communication: 7 March 2000 (initial submission)

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

Meeting on 29 March 2004,

Having concluded its consideration of communication No. 917/2000, submitted to the
Human Rights Committee by Karina Arutyunyan, on behalf of her brother, Arsen Arutyunyan
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:

** 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. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Franco Depasquale, Mr.
Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rafael Rivas
Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen,
Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

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

1.1 The author of the communication is Karina Arutyunyan, an Uzbek citizen of Armenian origin, currently residing in Italy. She submits the communication on behalf of her brother, Arsen Arutyunyan, an Uzbek citizen of Armenian origin born in 1979, who at the time of submission of the communication was under sentence of death and detained in Tashkent, awaiting execution. The author claims that her brother is a victim of violations by Uzbekistan¹ of articles 5, paragraph 2; 6, paragraphs 1 and 4; 7; 10, paragraph 1; 14, paragraph 1; 15, paragraph 1; and 17, of the International Covenant on Civil and Political Rights. The author is not represented by counsel.

1.2 Under rule 86 of its Rules of procedure, the Committee, acting through its Special Rapporteur for New Communications, requested the State party on 22 March 2000 not to carry out the death sentence against Mr. Arutyunyan, while his case is under consideration by the Committee. On 11 May 2000, the State party informed the Committee that on 31 March 2000, Mr. Arutyunyan's death sentence had been commuted to 20 years' imprisonment.

The facts as submitted by the author

2.1 Mr. Arutyunyan was a member of the Uzbek rock band "Al-Vakil". On 26 May 1999, he and another member of the band – Mr. Siragev - were arrested in Moscow following a warrant issued by the Uzbek authorities for the murder and robbery in April 1998 in Tashkent, of one Laylo Alieva (a pop star), as well as the attempted murder of her son. They were transferred to Tashkent on 3 June 1999.

2.2 By judgement of 3 November 1999, Messrs Arutyunyan and Siragev were found guilty of having murdered Mrs. Alieva and robbed her of her jewellery, and were sentenced to death by the Tashkent City Court. On 20 December 1999, the Supreme Court confirmed the judgement.

The claim

3.1 The author claims that following her brother's arrival in Tashkent on 3 June 1999, he was kept in a secret place of detention for two weeks; despite numerous requests, the Office of the Attorney-General refused to communicate his place of detention.

3.2 It is alleged that both Messrs. Arutyunyan and Siragev were mistreated and tortured during the investigation to make them confess, to the extent that Mr. Siragev had to be hospitalised. The author assumes that the same was true of her brother.

3.3 Mr. Arutyunyan's trial is alleged to have been conducted in a biased manner, as the Tashkent City Court based its judgment on his sole confession, in the absence of any witnesses, material proof or fingerprints, and on the depositions of individuals who disappeared shortly

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

after the investigation, which means that their depositions were not re-confirmed before the court. The Supreme Court, allegedly in a mere 35 minute session, validated these alleged procedural mistakes and violations committed by the investigators and the Court of first instance.

3.4 Allegedly, Mr. Arutyunyan was initially prevented from making use of the services of a counsel hired by his family, under the pretext that no procedural action had yet been initiated. It is alleged that when he was interrogated and confessed his guilt, counsel was assigned to him ex officio, allegedly purely for the sake of form. Later when privately retained counsel was allowed to defend him, they were prevented from meeting in private. Counsel was only allowed to examine the Tashkent City Court's records a few minutes before the beginning of the hearing in the Supreme Court. He was threatened by Mrs. Alieva's family to the point that he resigned and had to be replaced. In this context, it is alleged that Mrs. Alieva's relatives were in high positions in the judiciary. It is alleged that Counsel appointed thereafter was also threatened.

The State party's observations

4.1 On 11 May 2000, the State party gave the following information on the case: The Presidium of the Supreme Court examined the case on 31 March 2000 and decided to commute the death sentence of Mr. Arutyunyan to 20 years of imprisonment. Furthermore, by virtue of a Presidential amnesty, the term was reduced "by twenty five percent" (five years).

Issues and proceedings before the Committee

Consideration of admissibility

5.1 The State party has not responded to the Committee's request, under rule 91 of the rules of procedure, to submit information and observations in respect of the admissibility and merits of the communication, despite several reminders addressed to it. The Committee recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol, that a State party examine in good faith all the allegations brought against it, and that it provide the Committee with all the information at its disposal. In light of the failure of the State party to cooperate with the Committee on the matter before it, due weight must be given to the author's allegations, to the extent that they have been substantiated.

5.2 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. 5.3 The Committee notes that the same matter is not being examined under any other international procedure and that domestic remedies have been exhausted. The requirements of article 5, paragraph 2 (a) and (b), of the Optional Protocol have thus been met.

5.4 The Committee has noted the allegation of a violation of the author's brother's rights under articles 5, paragraph 2, 15 and 17, of the Covenant. No information in substantiation of these claims has been adduced, and the author has failed to substantiate these claims, for the

purposes of admissibility. Accordingly, the Committee declares this part of the Communication inadmissible under article 2 of the Optional Protocol.

5.5 The Committee finds the claim of a violation of article 5, paragraph 2 of the Covenant inadmissible *ratione materiae* under article 3 of the Optional Protocol.

5.6 The author claims that after the transfer of her brother to Tashkent, his whereabouts were kept secret for two weeks, and that the Office of the Attorney-General did not divulge information on his location. In the absence of any observation by the State party on this issue, the Committee considers that this claim, may raise issues under article 10, paragraph 1 of the Covenant, and is therefore admissible.

5.7 The Committee has noted the author's claim that the trial of Mr. Arutyunyan was unfair. While regretting the absence of any observation from the State party in this regard, the Committee notes that this claim primarily relates to the assessment of facts and evidence by national tribunals. It recalls that it is in general for the courts of States parties, and not for the Committee, to evaluate the facts and evidence in any particular case, and to interpret domestic legislation, unless the evaluation was arbitrary or amounted to a denial of justice. The author has not substantiated for the purposes of admissibility that this was the case. In the circumstances, the Committee concludes that this claim is inadmissible under article 2 of the Optional Protocol.

5.8 The Committee has taken note of the allegation that Mr. Arutyunyan was not allowed to be represented by the lawyer of his choice in the initial stages of the investigation; later, his counsel was prevented from consulting the Tashkent City Court's records in preparation of the appeal. In the absence of any pertinent information from the State party in this regard, the Committee declares this part of the communication admissible, in as far as it appears to raise issues under articles 14, paragraph 3 (d), and 6 of the Covenant.

5.9 The author claims that Mr. Arutyunyan was beaten and tortured by the investigators to make him confess, contrary to article 7 of the Covenant. While the State party has not addressed this claim, the author's allegation is vague and general. In the absence of any adequately corroborated information in this regard, the Committee declares this part of the communication inadmissible, as the author has failed to substantiate her claim for the purposes of the admissibility, under article 2 of the Optional Protocol.

Consideration on 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 in article 5, paragraph 1 of the Optional Protocol.

6.2 The Committee notes the allegation that Mr. Arutyunyan was kept incommunicado for two weeks after his transfer to Tashkent. In substantiation, the author claims that the family tried, unsuccessfully, to obtain information in this regard from the Office of the Attorney-General. In these circumstances, and taking into account the particular nature of the case and the fact that no

information was provided by the State party on this issue, the Committee concludes that Mr. Arutyunyan's rights under article 10, paragraph 1, of the Covenant have been violated. In the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary to separately consider the claims arising under article 7.

6.3 The author alleges that her brother's right to defence was violated, because once counsel of his choice was allowed to represent him, the latter was prevented from seeing him confidentially; counsel was allowed to examine the Tashkent City Court's records only shortly before the hearing in the Supreme Court. In support of her allegations, the author produces a copy of the lawyer's request for an adjournment, addressed to the Supreme Court on 17 December 1999; this stated that under different pretexts, he had been denied access to the Tashkent City Court's records. This request was turned down by the Supreme Court. On appeal, counsel claimed that he was unable to meet privately with his client to prepare his defence; the Supreme Court failed to address this issue. In the absence of any pertinent observations from the State party on this claim, the Committee considers that article 14, paragraph 3 (d) has been violated in the instant case.

6.4 The Committee recalls its jurisprudence² pursuant to which the imposition of a death sentence 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, if no further appeal against the death sentence is possible. In Mr. Arutyunyan's case, the final death sentence was pronounced without the requirements for a fair trial set out in article 14 having been met. This results in the conclusion that the right protected under article 6 has also been violated. This violation was remedied by the commutation of the author's death sentence by the Presidium of the Supreme Court, on 31 March 2000.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the Covenant, is of the view that the facts before it disclose a violation of articles 10, paragraph 1, and 14, paragraph 3 (d), of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Arutyunyan with an effective remedy, which could include consideration of a further reduction of his sentence and compensation. The State party is also under an obligation 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

²Brown c. Jamaïque, Case No. 775/1997.

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 in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
