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HUMAN RIGHTS COMMITTEE
Eighty-seventh session
10 – 28 July 2006

VIEWS

Communication No. 959/2000

Submitted by:	Mr. Saimijon and Mrs. Malokhat Bazarov (not represented by counsel)
Alleged victim:	Nayimizhon Bazarov, the authors' son
State Party:	Uzbekistan
Date of communication:	16 November 2000 (initial submission)
Document references:	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 5 December 2000 (not issued in document form)
Date of adoption of Views:	14 July 2006

*Made public by decision of the Human Rights Committee.

Subject matter: torture, unfair trial; habeas corpus

Substantive issues: Imposition of a sentence to death rendered in an unfair trial

Procedural issues: Level of substantiation of claim

Articles of the Covenant: 6, 7; 9; 10; 11; 14; 15

Articles of the Optional Protocol: 2

On 14 July 2006, 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. 959/2000. The text of the Views is appended to the present document.

[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

Eighty-seventh session

concerning

Communication No. 959/2000[*]

Submitted by:	Mr. Saimijon and Mrs. Malokhat Bazarov (not represented by counsel)
Alleged victim:	Nayimizhon Bazarov, the authors' son
State Party:	Uzbekistan
Date of communication:	16 November 2000 (initial submission)

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

Meeting on 14 July 2006,

Having concluded its consideration of communication No. 959/2000, submitted to the Human Rights Committee on behalf of Mr. Nayimizhon Bazarov 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 authors are Saimijon Bazarov (born in 1950) and his wife Malokhat, both Uzbek nationals. They submit the communication on behalf of their son, Nayimizhon Bazarov (executed pursuant a sentence to death of 11 June 1999 pronounced by the Samarkand Regional Court), and claim that he is a victim of violations by Uzbekistan of his rights under articles 6; 7; 9; 10; 11; 14; and 15, of the Covenant[1]. Although they do not invoke it

[*] 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. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

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

specifically, the communication also appears to raise issues under article 7 in respect of the authors. They are not represented by counsel.

1.2 On 5 December 2000, pursuant to rule 92 of its rules of procedures, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party not to carry out the execution of Mr. Bazarov so as to enable the Committee to examine the present communication. On 26 January 2004, however, the State party informed the Committee that the execution of the alleged victim had already been carried out on 20 July 2000, i.e. prior to the submission (16 November 2000) and the registration of the case on 5 December 2000, and the formulation of the Committee's request for interim measures of protection.

The facts as submitted by the authors

2.1 On 27 May 1998, while Mr. Nayimizhon Bazarov was driving to Samarkand to visit his hospitalized sister, he was stopped in Urgut by two police officers (S. Dzh., deputy Chairman of the Urgut Regional Branch of the Ministry of Internal Affairs, and R. Kh. from the Criminal Search Office), who asked him to drive another policeman, E.S., to Dzhambay region and then to bring him back. The author's son allegedly refused to do so, claiming that he had urgent business; allegedly, the police officers expressed disappointment. Finally, he drove the policemen to the destination, but did not bring him back.

2.2 On 14 June 1998, while driving again, the author's son was stopped in Urgut by a group of police officers (two of whom, S. Dzh. and R. Kh. were present during the 27 May episode). He was brought to the (Urgut) Regional Department of the Ministry of Internal Affairs, allegedly without any warrant. There, allegedly, while being interrogated, he was beaten and threatened with having his family put in prison. Later the same day, he was charged with drug trafficking. Investigators searched his home, in the presence of witnesses, and after having hidden a small quantity of drugs under a carpet, they "discovered" it, which was duly recorded. The authors claim that their son could not request the review of the legality of his arrest and detention by a court, as no such possibility exists in the State party.

2.3 On 21 June, a confrontation was conducted between the authors' son and one G.H., in the presence of S. Dzh., an investigator, and Bazarov's lawyer[2]. G.H. affirmed that the author's son took part, together with other persons, in the murder of two individuals that took place in her house, in the night of 1 to 2 May 1998, to take possession of 100 grams of opium.

2.4 The case against the authors' son and eight other co-defendants was transmitted to the Samarkand Regional Court, and a court trial started on 12 April 1999. On 11 July 1999, the Court found the authors' son and one of his co-defendants guilty of murder, and other crimes, including drug trafficking, and sentenced them to death[3].

2.5 According to the authors, their son and his co-defendants claimed in court that they were beaten and tortured during the preliminary investigation to force them give false evidence, and all claimed to be innocent of the murder; their son also claimed to be innocent

[2] According to the authors, their son was presented to his lawyer on 16 June 1998. It is not clear from the case file whether the lawyer was appointed ex-officio, or was privately hired.
[3] The eight others co-accused were sentenced to different terms of imprisonment.

of the drug-related charges. Allegedly, his co-defendants showed parts of their bodies "burned with cigarettes, covered with bruises, haematoma, swellings on their heads, broken teeth" and asked the presiding judge to order a medical examination in this relation. The court did not order a medical examination, but called two of the investigators, who denied any use of unlawful methods of interrogation during the pre-trial investigation.

2.6 The authors claim that their son's trial did not meet the requirements for a fair trial: the criminal case was "fabricated" by the investigators, and the court based its conclusions mainly on the depositions of G.H. (which, according to the authors, should not have been taken into account because they were modified several times during the preliminary investigation) and on evidence extracted under torture from the defendants during the preliminary investigation. They assert that the court failed to establish their son's guilt without any reasonable doubt, and to solve a number of contradictions. They also assert that their son had an alibi - he was not in Urgut at the night of the crime, but was in Samarkand to meet them when they returned from holidays and their train arrived early in the morning - but allegedly it was not taken into account by the court.

2.7 On an unspecified date, Mr. N. Bazarov filed a cassation appeal against the Samarkand Regional Court judgment of 11 June 1999. On 24 December 1999, the Supreme Court upheld the judgment, thus confirming his death sentence. Domestic remedies have thus been exhausted.

The complaint

3. The authors claim that the above presented facts constitute a violation of their son's rights under articles 7; 9; 10; 11; 14, read together with article 6; and 15, of the Covenant. Although they do not invoke this provision specifically, the communication also appears to raise issues under article 7 in respect of the authors.

State party's observations

4.1 The State party presented its comments on 10 October 2002 and 15 December 2003. It affirms that according to the judgment of 11 June 1999, subsequently confirmed by a ruling of the Supreme Court on 24 December 1999, the alleged victim, premeditatedly, and acting in a criminal group with two other co-defendants (R. and M.), participated in the murder of two individuals to misappropriate 190 grams of opium. In addition, the alleged victim and R. were found guilty of having sold to one S., in March 1998, 100 grams of opium (constituting a "significant amount").

4.2 During a search conducted in the alleged victim's house on 14 June 1998, the investigators seized 1 gram of opium and 0.5 gram marijuana, and a special tube for use of narcotics.

4.3 The court found the alleged victim guilty of unlawful appropriation of narcotics obtained through a robbery, unlawful sale of narcotics, unlawful acquisition and sale of narcotics by an individual who had previously participated in the unlawful trade in drugs, premeditated murder under aggravated circumstances of two individuals committed with a particular violence, acting with selfish motivations, carried out by a group.

4.4 According to the State party, the authors' son's guilt has been proven by the material contained in the criminal case file, and his acts were qualified correctly. In defining his penalty, the court has evaluated the character of the accomplished act, the fact that it was committed for selfish ends, by a group of people, in a particularly violent manner, that it related to an unlawful sale of a significant amount of narcotics, that the author had no "socially-useful" occupation. The court concluded that he constituted a danger for society, and that his correction was impossible.

Authors' comments

5.1 On 19 November 2003, the authors commented on the State party's submission. According to them,, the State party has failed to provide detailed answers on the merits of the communication, nor has it addressed the claim on article 9 (lack of judicial control over arrest/pre-trial detention); this was due to the lack of such judicial supervision within the State party's legal order[4].

5.2 On the article 7 claim, they argue that the State party has failed to undertake an effective investigation into the allegation of torture/ill-treatment their son and his co-defendants were subjected to in the Urgut City Police station. They reiterate that their son did not confess guilt, but that the other co-defendants were forced to give incriminating testimonies against him. They reaffirm that during the trial, the alleged victim and his co-defendants testified that they were tortured and severely beaten, and also some of them were subjected to insertion of empty bottles in their anuses by the investigators. Mr. Bazarov, his lawyer, and the other co-defendants requested the presiding judge to investigate those abuses, and to undertake medical examinations, but their requests were rejected. Although the presiding judge summoned two of the law-enforcement officers in question and interrogated them as to whether they used torture during the investigation, after their reply "No", they were allowed to leave the room. According to the authors, the State party similarly failed to undertake any investigation in the context of the present communication.

5.3 As to the alleged violation of article 14, the authors reiterate that their son's trial did not meet the requirements of a fair trial. They claim that the presiding judge conducted the trial in a biased and partial manner, read the indictment himself, and questioned some witnesses; he did not "insist that a prosecutor is present" throughout the trial, and a prosecutor was thus present only during 15 of a total of 20 trial sessions, and was absent at the opening of the trial. The authors claim that the presiding judge did not solve any contradiction that had appeared during the examination of the criminal case, and, ultimately, he imposed a death sentence notwithstanding that the prosecutor requested 20 years' prison term as Bazarov's penalty.

5.4 The authors recall that the main argument of the present communication is that their son's presumption of innocence was violated and that he was sentenced to death on the basis of "doubtful" evidence and confessions obtained under torture, and on the basis of "highly questionable evidence". They contend that the court failed to make an adequate assessment of their son's exculpating evidence, and "boldly" rejected his defence alibi. They contend that the State party has failed to submit a detailed reply on these issues.

[4] A Presidential Decree of 8 August 2005, provides that, within the frame of a set of reforms, court control over decisions of pre-trial detention should be enacted on 1 January 2008.

5.5 As to the alleged violation of article 6, of the Covenant, the authors reaffirm that their son's right to life was violated because he was sentenced to death after an unfair trial.

5.6 Finally, the authors state that they are unaware of their son's whereabouts, and contend that the officials ignored all their requests in this respect. Allegedly, the only information they received was obtained in September 2002 through "unofficial channels", assuring them that their son was alive. The authors claim that the secrecy surrounding their son's whereabouts imposes unbearable suffering on their entire family, and that every day they live surrounded by a situation of uncertainty and psychological pain.

Further information from the State party

6.1 The State party presented further observations on 26 January 2004. It reiterates its previous observations and affirms that the case may be considered groundless on the merits. It contends that the authors' allegations of violation of article 7 are unsubstantiated. Contrary to what is indicated in the communication, the Supreme Court of Uzbekistan unequivocally states that according to the trial records, neither the alleged victim nor his co-defendants or lawyers, ever requested the presiding judge to appoint a medical commission to investigate allegations of torture or ill-treatment. At the same time, according to the State party, "internal safeguard procedures" of law-enforcement agencies had not revealed any misconduct during pre-trial detention of Mr. Bazarov.

6.2 According to the State party, the allegations under article 14 are also unsubstantiated. Contrary to the authors' allegations, the trial records show that the court trial started on 12 April 1999, in the presence of a prosecutor, defence lawyers, interpreter, all defendants, and victims. The trial is said to have been conducted in a continuous manner, and a prosecutor, lawyers, and defendants were present at all times, and all interrogations were conducted "in the presence of the prosecutor, lawyers, and defendants".

6.3 The State party finally states that according to its competent authorities, Bazarov's sentence was carried out on 20 July 2000, i.e. prior to the registration of the communication by the Committee and to the formulation of its request for interim measures under rule 92 of its rules of procedure, on 5 December 2000.

Issues and proceedings before the Committee

Admissibility considerations

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 that the same matter is not being examined under another international procedure of investigation or settlement, and that domestic remedies have been exhausted. The requirements of article 5, paragraph 2 (a) and (b), of the Optional Protocol, have therefore been met.

7.3 The Committee has noted the authors' claim under articles 7 and 10, to the effect that their son was subjected to torture during the preliminary investigation, and that his claims in this respect were ignored by the court. The State party objects that neither the authors' son

nor his co-defendants or lawyers ever requested the court to carry out a medical examination on this issue, whereas "internal safeguard procedures" of the law-enforcement agencies had not revealed any misconduct during the pre-trial detention. The Committee notes that the material before it, in particular the alleged victim and his lawyer's appeals against the judgment of 11 June 1999 of the Samarkand Regional Court, do not contain any information whatsoever about Mr. Bazarov's mistreatment or torture. In addition, no explanation was provided by the authors on whether the alleged victim, his relatives, or his lawyer, complained about these acts during the preliminary investigation. In the circumstances, the Committee concludes that the authors have failed to sufficiently substantiate this particular claim, for purposes of admissibility, and this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.4 The Committee has further noted the authors' mere allegation that their son's rights under articles 11 and 15, of the Covenant were violated. In the absence of any information in this respect, the Committee decides that the authors have failed to sufficiently substantiate their claim, for purposes of admissibility. Accordingly, this part of the communication is inadmissible under article 2, of the Optional Protocol.

7.5 The Committee considers that the remaining claims of the present communication, raising issues under articles 9, and article 14, paragraph 1, read together with article 6, of the Covenant, in relation to the alleged victim, and article 7, of the Covenant, with respect to the authors, are sufficiently substantiated, for purposes of admissibility.

Consideration of the merits

8.1 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.

8.2 The authors have claimed that their son was unable to have the decision to place him in pre-trial detention reviewed by a judge or other officer authorized by law to exercise judicial power, because Uzbek law does not provide, for such a possibility. The State party has not refuted this allegation. The Committee observes that the State party's criminal procedure law provides that decisions for arrest/pre-trial detention are approved by a prosecutor, whose decisions are subject to appeal before a higher prosecutor only, and cannot be challenged in court. It notes that author's son was arrested on 14 June 1998, placed on pre-trial detention on 18 June 1998, and that there was no subsequent judicial review of the lawfulness of detention until he was brought before a court, on 12 April 1999. The Committee recalls[5] that article 9, paragraph 3, is intended to bring the detention of a person charged with a criminal offence under judicial control and recalls that it is inherent to the proper exercise of judicial power, that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. In the circumstances of the present case, the Committee is not satisfied that the public prosecutor may be characterized as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3. The Committee therefore concludes that there has been a violation of this provision.

[5] See, inter alia, Mrs. Darmon Sultanova (Ruzmetovs) v. Uzbekistan, Communication No. 915/2000, Views adopted on 30 March 2006, paragraph 7.7.

8.3 The Committee has noted the authors' allegations that their son's co-defendants were beaten and tortured during the investigation to the point that they gave false testimony incriminating him and served as a basis for his conviction. The Committee notes that from the material before it, it transpires that the alleged victim and his lawyer have claimed that the co-defendants showed marks of torture in court and affirmed that their testimonies were obtained under torture, in response to which the presiding judge summoned two of the investigators in question, and asked them whether they used unlawful methods of investigation, and dismissed them after receiving a negative reply. The State party merely replied that the alleged victim's co-defendants or lawyers did not request the court to carry out any medical examination in this regard, and that unspecified "internal safeguard procedures" of the law-enforcement agencies had not revealed any misconduct during the pre-trial detention. In this connexion, the Committee notes that the State party has not adduced any documentary evidence of any inquiry conducted in the context of the court trial or in the context of the present communication. It recalls that the burden of proof (on the use of torture) cannot rest alone on the author of a communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information; it is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities[6]. In the circumstances, the Committee considers that due weight must be given to the authors' allegations, as the State party has failed to refute the allegations that the alleged victim's co-defendants were tortured to make them give false evidence against him. Accordingly, the Committee concludes that the facts as presented reveal a violation of the alleged victim's rights under article 14, paragraph 1, of the Covenant.

8.4 In light of the above conclusion, and bearing in mind its constant jurisprudence to the effect that that an imposition of a sentence of death rendered in a trial that did not meet the requirements of a fair trial amounts also to a violation of article 6 of the Covenant[7], the Committee concludes that the alleged victim's rights under this provision have also been violated.

8.5 The Committee has taken note of the authors' claim that the authorities did not inform them about their son's situation for a long period of time, and learned about his execution a long time after his death. It notes that the State party's law does not allow, for a family of an individual under sentence of death, to be informed either of the date of execution or of the location of the burial site of an executed prisoner[8]. The Committee understands the continued anguish and mental stress caused to the authors, as the mother and father of a condemned prisoner, by the persisting uncertainty of the circumstances that led to his execution, as well as the location of his gravesite. It recalls that the secrecy surrounding the date of execution, and the place of burial, as well as the refusal to hand over the body for burial, have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty

[6] See, inter alia, Communication No. 30/78, Irene Bleier Lewenhoff and Rosa Valino de Bleier v. Uruguay, Views adopted on 29 March 1982, paragraph 13.3.

[7] See, inter alia, Siragev v. Uzbekistan, Communication No. 907/2000, Views adopted on 1 November 2005, paragraph 6.4.

.[8] Pursuant to article 140 of the State party's Code on the Execution of Criminal Penalties, the body of the executed person is not given for burial, and the place of burial is not revealed.

and mental distress[9]. The Committee considers that the authorities' initial failure to notify the authors of the execution of their son and the failure to inform them of his burial place, amounts to inhuman treatment of the authors, in violation of article 7 of the Covenant.

9. 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. Naymijon Bazarov's rights under articles 9, paragraph 3, and article 14, paragraph 1, read together with article 6, of the Covenant, and the rights of his parents, Mr. and Mrs. Bazarov, under article 7.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors of the communication with an effective remedy, including information on the location where their son is buried, and effective reparation for the anguish suffered. 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 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.]

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[9] See, for example, Kholinisso Aliboeva (Valichon Aliboev) v. Tajikistan, Communication No. 985/2001, Views adopted on 18 October 2005, paragraph 6.7 ; Khalilova v. Tajikistan, Communication No 973/2001, Views adopted on 30 March 2005; Lyashkevich v. Belarus, Communication No 887/1999, Views adopted on 3 April 2003.