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

VIEWS

Communication No. 1280/2004

Submitted by:	Mr. Akbarkhudzh Tolipkhuzhaev (not represented by counsel)
Alleged victim:	Mr. Akhrorkhuzh Tolipkhuzhaev, the author's son (deceased).
State party:	Uzbekistan
Date of communication:	6 May 2004 (initial submission)
Document References:	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 6 May 2004 (not issued in document form).
Date of adoption of Views:	22 July 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Death sentence imposed after unfair trial and use of torture during preliminary investigation

Procedural issue: Non-respect of a request for interim measures of protection.

Substantive issues: Forced confession; arbitrary deprivation of life following a death sentence imposed after an unfair trial.

Articles of the Covenant: 6(1), (4), and (6); 7; 9(1)-(4); 10; 14(1)-(4); 16

Article of the Optional Protocol: 2

On 22 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.1280/2004.

[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. 1280/2004[*]

Submitted by:	Mr. Akbarkhudzh Tolipkhuzhaev (not represented by counsel)
Alleged victim:	Mr. Akhrorkhuzh Tolipkhuzhaev, the author's son (deceased).
State party:	Uzbekistan
Date of communication:	6 May 2004 (initial submission)

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

Meeting on 22 July 2009,

Having concluded its consideration of communication No. 1280/2004, submitted to the Human Rights Committee on behalf of Mr. Akhrorkhuzh Tolipkhuzhaev 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 of the communication is Mr. Akbarkhudzh Tolipkhuzhaev, an Uzbek national, born in 1951. He submits the communication on behalf of his son, Akhrorkhuzh Tolipkhuzhaev, also an Uzbek national, born in 1980, who, at the time of submission of the communication, was imprisoned in Uzbekistan and was awaiting execution of a death sentence imposed by the

[*] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

Military Court of Uzbekistan on 19 February 2004. The author claims that the State party violated his son's rights under article 6, paragraphs 1 and 4; article 7; article 9; article 10; article 14, paragraphs 1-3; and article 16 of the Covenant.

1.2 On 6 May 2004, pursuant to rule 92 of its rules of procedure, the Human Rights Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party not to carry out Mr. Tolipkhuzhaev's execution while his case is examined by the Committee. On 27 June 2004, the State party informed the Committee that given that Mr. Tolipkhuzhaev's sentence was quashed by the Military College of the Supreme Court of Uzbekistan on 25 May 2004, his case was referred back to the Military Court of Uzbekistan for further examination.

1.3 On 15 March 2005, the Committee received unofficial information that the author's son might have been executed in early March. The issue was raised during the examination of the State party's second periodic report under the Covenant, on 21 and 22 March 2005. The State party's delegation provided the Committee with information to the effect that Mr. Tolipkhuzhaev's execution had been stayed pending the consideration of his case by the Committee.

1.4 On 13 April 2005, however, the author provided the Committee with a copy of a death certificate, according to which his son had been executed on 1 March 2005. The same day the Committee, acting through its Chairperson, sent a letter to the Permanent Representative of Uzbekistan to the United Nations Office in Geneva, expressing "dismay and utmost concern" about the alleged victim's execution, and requesting prompt written explanations. The State party explained, by Note verbale of 23 April 2008, that on 12 April 2004, Mr. Tolipkhuzhaev had refused to make a request for a presidential pardon. He was executed after the sentence of 19 February 2004 became executory. According to the State party, the Note verbale transmitted by the Office of the High Commissioner for human rights with the request not to execute the alleged victim pending the consideration of his case had reached the Supreme Court of Uzbekistan only after the alleged victim's execution.

1.5 The Optional Protocol entered into force for the State party on 28 December 1995.

The facts as presented by the author:

2.1 On 19 February 2004, Mr. Akhrorkhudzh Tolipkhuzhaev, then a military officer, was found guilty and sentenced to death by the Military Court of Uzbekistan, for the murder of the children of one of his former commanders, in order to conceal the theft of jewellery, money and other items from the latter's home on 17 July 2001. After committing the crime, he fled to Kazakhstan where he was subsequently arrested. He was transferred to Tashkent on 13 September 2002.

2.2 On 24 March 2004, the Military College of the Supreme Court of Uzbekistan confirmed Mr. Tolipkhuzhaev's sentence. At the time of submission of the communication, the author contended that a request for pardon had been filed with the Office of the President, but no reply had been received.

2.3 According to the author, his son's death sentence was unlawful, as the courts followed the position of the investigation, failed in their duty of impartiality and objectivity, and based their decisions on his son's confessions obtained under torture at the beginning of the investigation. His son's guilt and involvement in the murder was not established without reasonable doubt either during the preliminary investigation or in court. The sentence was too severe and unfounded, and did not correspond to his son's personality, given that his son was a good and quiet individual and a hard worker who had never committed a crime before. The court allegedly assessed incorrectly the evidence on file and ignored elements proving his son's innocence.

2.4 The author reiterates that during the preliminary investigation, his son was beaten and tortured by policemen and forced to confess his guilt. He refers to a Ruling of the Supreme Court of 20 November 1996, according to which evidence obtained through unlawful means of investigation is unlawful; in this case, the courts refused to examine the allegations of torture and beatings made by his son.

2.5 In court, the author's son denied having committed the murder. He acknowledged that he went to the home of his former commander on 17 July 2001, but the latter was absent. Given that Tolipkhuzhaev knew the family well, he was invited to wait for his friend in the apartment. Inside, he saw an open wallet with jewellery, and decided to steal it. At one moment, when his friend's daughter left the room, he took the wallet and escaped. Later the same day, he decided to return the jewellery and went back to the apartment. There, he discovered the bodies of his friend's children. Afraid that he would be charged with murder, he fled to Kazakhstan. He was arrested there and returned to Uzbekistan on 13 September 2002. After his return, he was beaten and tortured by investigators and was forced to produce written confessions for the murders.

2.6 The author provides details on how his son was treated by the police: several officers repeatedly lifted him and then violently dropped him on the concrete floor. Mr. Tolipkhuzhaev's started to bleed from the mouth. Later, he discovered blood in his urine, and he started to spit blood. When the investigators brought him to the Investigation Detention Centre (SIZO), both the duty officer at the detention centre and the centre's doctor refused to accept Mr. Tolipkhuzhaev in the centre, in light of his health condition. The author's son was then brought back to the police station and was given medical treatment there.

2.7 The author claims that his son had to be transferred to the Investigation Detention Centre (SIZO) on 16 September, but he was brought there only on 24 September 2002. The officers of the detention centre again refused to admit him, as his body was all black and blue. On 26 September 2002, he was once again brought to the detention centre but was again denied access. This time, however, the author's son asked the detention centre's authorities to keep him there, as otherwise, according to him, the police officers would kill him. He was thus admitted at the centre. At the detention centre, Mr. Tolipkhuzhaev continued to urinate and spit blood, had pain and could not sleep. He asked for help and a doctor (A.) examined him and ordered a treatment. According to the author, all this was documented in the detention centre's medical records. Mr. Tolipkhuzhaev's lawyer asked the trial court to examine these records, but this was not done.

2.8 The author gives other examples of instances where the court refused to examine additional evidence or to interrogate witnesses:

(a) Mr. Tolipkhuzhaev's lawyer requested the court to interrogate the medical doctor and the officer who were on duty in the temporary detention centre between 13 and 26 September, but allegedly his request remained unanswered.

(b) The lawyer produced a document produced by a doctor from the Ministry of Interior, attesting that Mr. Tolipkhuzhaev had been subjected to torture. Instead of initiating an inquiry, however, the court ignored the evidence. In addition, Mr. Tolipkhuzhaev affirmed that he would be able to identify those who tortured him, but the judge refused to inquire into this affirmation.

(c) The court refused to interrogate two nurses from the detention centre in order to verify whether they had information about Mr. Tolipkhuzhaev's rib injury and the existence of other injuries, and to assess whether these injuries were registered in the medical centre's records. The court refused to interrogate the doctor (A.), who administrated a treatment to the author's son.

(d) The court did not take into consideration a document issued by a doctor from institution UYa 64-1 in Tashkent, to the effect that while in detention, Mr. Tolipkhuzhaev had received injuries to the ribs, arms and legs.

(e) The court refused to call four of Mr. Tolipkhuzhaev's cellmates, who allegedly could have testified about the latter's torture and ill-treatment.

(f) Both the author's son and counsel pointed out to the court that Mr. Tolipkhuzhaev was arrested on 13 September 2002, but was only brought to an investigation centre on 26 September 2002, instead of 16 September 2002 as required by law. They claimed that these dates were recorded in the registry of the Tashkent Department of the Ministry of Internal Affairs. They asked the court to examine the registry and the judge allegedly accepted to do so, but never in fact did. The above shows that the trial court has acted in a biased and unprofessional way in this case.

2.9 According to the author, his son's right to defence was also violated. During the early stages of investigation, he was not represented by counsel and was not informed of his procedural rights. According to Uzbek law, the presence of a lawyer is compulsory in all cases that might be punished with death penalty. In addition, when the case was examined on appeal, the appeal instance of the Military Court called as witnesses Mr. Tolipkhuzhaev's former lawyers and the prosecutor interrogated them. The lawyers in question allegedly testified against their former client, thus violating not only the law and the alleged victim's rights but also ethics rules of legal profession.

2.10 The author further adds that a witness affirmed in court that on the day of the crime, two individuals inquired about the exact location of the apartment of the father of the murdered persons. According to this witness, the individuals in question arrived in the neighbourhood in a black car. Shortly afterwards, she saw them leaving precipitously in the car after running out of the flat. This was confirmed by another witness. The court, however, allegedly ignored these depositions.

2.11 The author further contends that all expert's acts and conclusions do not establish who committed the murder. Immediately after the crime, investigators undertook a search with dogs. The dogs went into three different directions. At the crime scene, investigators found ten sets of fingerprints, but none of them matched those of Tolipkhuzhaev.

The complaint

3. The author claims that his son was sentenced to death unlawfully, after an unfair trial, with use of torture during the investigation to make him confess guilt. He claims that the State party violated his son's rights under article 6, paragraphs 1 and 4; article 7; article 9; article 10; article 14, paragraphs 1 – 3; and article 16, of the Covenant.

State party's observations on admissibility and merits:

4.1 On 27 June 2004, the State party informed the Committee that on 3 July 2002, the Almaty City Court (Kazakhstan) had found Mr. Tolipkhuzhaev guilty of theft and sentenced him to three years in prison.

4.2 On 19 February 2004, the Military Court of Uzbekistan found him guilty of having murdered, with aggravating circumstances, two children, on 17 July 2001 in Tashkent; of having committed a theft in their parent's home; and of having deserted the Uzbek armed forces. For these crimes, he was sentenced to death. On 26 March 2004, the appeal instance of the Military Court upheld the death sentence.

4.3 The State party adds that on 25 May 2004, the Military College of the Supreme Court annulled the decision of the appeal instance of the Military Court, given that a number of circumstances were not examined, and referred the case back for further examination.

4.4 On 23 April 2008, the State party added that on 12 April 2004, Mr. Tolipkhuzhaev refused to file a request for pardon, and a record to this effect was sent to the presidential administration. Once the ruling entered into force, the death sentence was carried out. The State party finally contends that the Committee's request for interim measures was received by Supreme Court of Uzbekistan after the execution has already been carried out.

5. The author was requested to comment on the State party's observations, but no reply was received, in spite of two reminders (sent in 2008 and 2009).

Non respect of the Committee's request for interim measures

6.1 When submitting his communication on 6 May 2004, the author informed the Committee that at that juncture, his son was detained on death row. On 27 June 2004, the State party informed the Committee that the alleged victim's criminal case was referred back for further investigation. During the examination of the State party's second periodic report under the Covenant, in March 2005, the Committee asked for clarifications on the specific case. The State party replied that Mr. Tolipkhuzhaev's execution had not been carried out. On 23 April 2008, however, the State party contended that the alleged victim's execution had in fact been carried out after the ruling of the Military Court of 19 February 2004 had become executory. The Committee notes that in spite of the manifestly contradictory contentions made by the State party

on this particular issue, it remains uncontested that the execution in question took place despite the fact that the alleged victim's communication had been registered under the Optional Protocol and a request for interim measures of protection had been duly addressed, and received, by the State party, as confirmed at least by the State party reply of 27 June 2004, even if it is contended that this information was conveyed to the Supreme Court after the execution.

6.2 The Committee recalls 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[1]. Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith, so as to enable it to consider such communications, and after examination, to forward its Views to the State party and to the individual concerned (article 5, paragraphs 1 and 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 final Views.

6.3 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 to 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 case, the author alleges that his son was denied his rights under various articles of the Covenant. Having been notified of the communication, the State party breached its obligations under the Protocol by executing the alleged victim before the Committee concluded its consideration and examination of the case, and the formulation and communication of its Views.

6.4 The Committee recalls that requests for interim measures of protection under rule 92 of its 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 this case, the execution of Mr. Tolipkhuzhaev, undermines the protection of Covenant rights through the Optional Protocol[2].

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

[1] See, inter alia, Piandiong v. the Philippines, Communication No. 869/1999, Views adopted on 19 October 2000, paragraphs 5.1 - 5.4; Shevkkhie Tulyaganova v. Uzbekistan, Communication No. 1041/2001, Views adopted on 20 July 2007, paragraphs 6.1 - 6.3.

[2] See, for example, Davlatbibi Shukurova v. Tajikistan, Communication No. 1044/2002, Views adopted on 17 March 2006, paragraphs 6.1 -6.3.

investigation or settlement, and that it is uncontested that domestic remedies have been exhausted.

7.3 The Committee has noted the author's claim under articles 6, paragraph 4; article 9; and article 16, of the Covenant. It observes that the author advances these claims in vague and general terms, without specifying which particular acts/omissions of the State party's authorities amounted to a violation of his son's rights under these provisions of the Covenant. In the absence of any further information in this respect, the Committee considers that this part of the communication is inadmissible as insufficiently substantiated, pursuant to article 2 of the Optional Protocol.

7.4 The author has also invoked a violation of his son's rights under article 14, paragraph 2, of the Covenant. The Committee observes, however, that the author has submitted no further information in this connection. In the circumstances, it also considers this part of the communication inadmissible under article 2 of the Optional Protocol, because of insufficient substantiation.

7.5 The Committee considers that the remaining part of the communication is sufficiently substantiated, for purposes of admissibility, and declares it admissible, as far as raising other issues under article 6; and issues under article 7; article 10; and article 14, paragraphs 1 and 3, of the Covenant.

Consideration of the merits

8.1 The Human Rights Committee has considered the communication in 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 author claims that his son was beaten and tortured by the police immediately after his transfer from Kazakhstan to Uzbekistan, and he was thus forced to confess guilt. The author provides detailed information about his son's ill-treatment, and claims that numerous complaints made to this effect were ignored by the courts. The State party does not refute these allegations specifically, but rather limits itself in contending that the guilt of the author's son was fully established.

8.3 The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially[3]. Although it transpires from the copy of the decision of the Military Court that Mr. Tolipkhuzhaev's torture allegations were addressed and rejected by the court[4] while re-examining the criminal case on 29 October 2004, the Committee considers that in the circumstances of the present case, the State party has failed to demonstrate that its authorities did address the torture allegations advanced by the author expeditiously and adequately, in the context of both domestic criminal proceedings and the present communication. Accordingly, due weight must be given to the author's allegations. The Committee therefore concludes that the facts before it disclose a violation of the rights of Mr. Tolipkhuzhaev under articles 7 and 14, paragraph 3 (g), of the Covenant. In the light of this

[3] General Comment on article 7, No. 20 [44], adopted on 3 April 1992, paragraph 14.
[4] See footnote No. 6 above.

conclusion, it is not necessary to examine separately the author's claim under article 10 of the Covenant.

8.4 The Committee considers that in the present case, the courts, and this was uncontested by the State party, failed to address properly the victim's complaints related to his ill-treatment by the police and did not pay due attention to the numerous requests of the author's son and his defence counsel to have a number of witnesses interrogated and other evidence examined in court in this connection. The Committee considers that as a consequence, the criminal procedures in Mr. Tolipkhuzhaev's case were vitiated by irregularities, which places in doubt the fairness of the criminal trial as a whole. In the absence of any pertinent observations from the State party in this respect, and without having to examine separately each of the author's allegations in this connection, the Committee considers that in the circumstances of the case, the facts as presented reveal a separate violation of the author's son's rights under article 14, paragraph 1, of the Covenant.

8.5 The author finally claims a violation of article 6 of the Covenant, as Mr. Tolipkhuzhaev's death sentence was imposed after an unfair trial that did not meet the requirements of article 14. The Committee recalls 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[5]. In the present case, Mr. Tolipkhuzhaev's death sentence was passed and carried out, in violation of the right to a fair trial, as guaranteed by article 14 of the Covenant, and therefore also in violation of article 6 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 6; article 7; and article 14, paragraphs 1 and 3 (g), 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 the payment of adequate compensation and initiation of criminal proceedings to establish responsibility for Mr. Tolipkhuzhaev's ill-treatment. 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.]

[5] See, for example, Davlatbibi Shukurova v. Tajikistan, Communication No. 1044/2002, Views adopted on 17 March 2006, paragraph 8.6.