



International Covenant on Civil and Political Rights

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Human Rights Committee
Ninety-eighth session
8 to 26 March 2010

Decision

Communication No. 1174/2003

<u>Submitted by:</u>	Bakhrullo Minboev (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Tajikistan
<u>Date of the communication:</u>	20 May 2003 (initial submission)
<u>Documentation references:</u>	Special Rapporteur's rule 92/ 97 decision, transmitted to the State party on 21 May 2003 (not issued in document form)
<u>Date of present decision:</u>	19 March 2010

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Criminal procedure violations in a death penalty case.
<i>Procedural issues:</i>	Non-cooperation by the State party, evaluation of facts and evidence by courts, insufficient substantiation of allegations.
<i>Substantive issues:</i>	Unlawful detention, unfair trial, access to a lawyer of own choice, right to obtain attendance and examination of witnesses.
<i>Articles of the Covenant:</i>	6, paragraphs 1 and 2; 9, paragraphs 1 and 2; and 14, paragraph 3 (b and e).
<i>Articles of the Optional Protocol:</i>	2

[Annex]

ANNEX

Decision of the Human Rights Committee under the Optional protocol to the International Covenant on Civil and Political Rights (ninety-eighth session)

concerning

Communication No. 1174/2003**

Submitted by: Bakhrullo Minboev (not represented by counsel)

Alleged victim: The author

State party: Tajikistan

Date of the communication: 20 May 2003 (initial submission)

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

Meeting on 19 March 2010,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is Mr. Bakhrullo Minboev, a citizen of Tajikistan, currently serving a prison sentence in Tajikistan, who claims to be the victim of violations by the State party of his rights under article 6, paragraphs 1 and 2; article 9, paragraph 1 and 2; and article 14, paragraphs 1 and 3 (b and e), of the Covenant. The author is not represented.

1.2 On 21 May 2003, pursuant to rule 92 of its Rules of Procedure, the Human Rights Committee, acting through the Special Rapporteur on New Communications and Interim Measures, requested the State party not to carry out the death sentence against the author, while his case is under consideration by the Committee.

The alleged facts as presented by the author

2.1 On 1 November 2000, the author was detained on suspicion of theft. He was not presented with charges until 19 November 2000. During interrogations, the author confessed that he committed a murder in October 1997. At that time, he was working for the Ministry of Interior, and was asked by his chief to kill one of the murder victims. He was threatened that he and his family would be killed if he did not carry out the murder. On 5 November 1997, when he was in the same car as the victims, he fired a shot, but the

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, 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 and Mr. Krister Thelin.

bullet went through the intended victim's head and hit also a man sitting next to him. Both men died.

2.2 During investigation, the author was refused a lawyer of his choice. He had no legal defense for a period of three months, although under the Criminal Procedure Code legal assistance is compulsory in cases involving the death penalty starting from the pre-trial investigation. Later, he was assigned a public lawyer, who was not licensed for law practice. In addition, the order assigning this lawyer was invalid, as it was issued on 20 January 2000, while the author was detained only on 7 November 2000.

2.3 On 9 April 2001, he was convicted of premeditated murder of two or more persons and sentenced to death. During the trial, the author was able to have the lawyer of his choice, who requested forensic tests to be made to show that both deaths were caused by one bullet. The request was dismissed by the court. The author confessed having committed the murder, but added that only one of the deaths was caused by premeditated murder. The second person was killed accidentally. The court ignored this claim as well as the request by the defence to invite additional witnesses.

2.4 The author's cassation appeal was dismissed by the Cassation Court. However, an appeal to the Presidium of the Supreme Court under the supervisory review procedure resulted in the judgment being overturned and the case sent back for retrial on 11 January 2002. This decision was based on the following procedural flaws: 1) Lack of legal assistance of the author's own choosing; 2) The author's identity had not been fully established; and 3) failure to investigate a possible accidental death of the second victim. The case was sent to the same investigator who had conducted the original investigation and who was biased, and had his own interest in the outcome of the second investigation. Again, the lawyer selected by the author for his defense was not accepted by the judge, who assigned another lawyer. This lawyer allegedly signed procedural documents without the author's knowledge and failed to inform him of his right to study the investigation materials.

2.5 During the second trial, it was shown that one bullet killed both victims. However, the court ignored this fact and again sentenced the author to death on 24 September 2002.

2.6 The author was not allowed to be present during the review of his case at the cassation level, although, under the Tajik Criminal Procedure Code, he was entitled to it.

2.7 His cassation appeal of 15 November 2002 was declined by the Criminal Collegium of the Supreme Court. Similarly, his application for judicial review to the Chair of the Supreme Court was also dismissed. The author submits that the same matter is not being examined under another international procedure of investigation or settlement and that he has exhausted all available domestic remedies.

2.8 In his submission on 12 July 2003, the author adds that his mental health condition has deteriorated due to the stress of awaiting his execution.

The complaint

3.1 The author invokes article 6, paragraphs 1 and 2, as he claims that his right to life was violated due to the unfair judgement issued by an incompetent court;

3.2 The author claims that his rights under article 9, paragraphs 1 and 2, were violated as his detention was unlawful and he was not informed about the charges against him for more than a week.

3.3 The author invokes article 14, paragraph 1, as he claims that the court was biased because it ignored his testimonies and the results of forensic examinations.

3.4 The author claims that his rights under article 14, paragraph 3 (b), of the Covenant were violated, as he had no legal defense for a period of three months, and he was not able to be represented by the lawyer of his own choice. Furthermore, the assigned lawyer was not licensed for law practice and he was not able to communicate with him.

3.5 The author also invokes article 14, paragraph 3 (e), as the court ignored the defence's request to invite additional witnesses.

State party's submission and failure to address questions of admissibility and merits

4.1 On 13 October 2003, the State party submitted that the author was pardoned on 4 September 2003 and his death sentence was commuted to 20 years' imprisonment.

4.2 The State party was invited to present its observations on the admissibility and merits of the communication in May 2003. A reminder was sent in this respect in July 2005. The Committee notes that no information has been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the authors' claims. It recalls that under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have taken. In the absence of a reply from the State party, due weight must be given to the authors' allegations, to the extent that they have been properly substantiated.

Author's failure to provide additional information

5. The author, whose present whereabouts are unknown, did not provide any comments to the submission by the State party, despite reminders sent. The last communication from the author was received on 12 July 2003. Repeated requests as to his wish to continue his case, which were sent in 2005, 2006 and 2007, remain unanswered.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee notes the author's allegations that the trial court was unfair and biased, as it ignored his testimonies and the results of forensic examinations violating article 14, paragraph 1. It notes, however, that these claims largely relate to the evaluation of facts and evidence by the State party's courts. The Committee refers to its jurisprudence¹ and reiterates that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that it was clearly arbitrary or amounted to a denial of justice. The material before the Committee does not reveal that the conduct of the trial suffered from any such defects. Accordingly, the Committee considers that the author has not substantiated these allegations for purposes of

¹ See for example: Communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995 and *P.K. v. Canada*, inadmissibility decision of 20 March 2007. Communication No. 1188/2003, *Riedl-Riedenstein et al. v. Germany*; No. 886/1999, *Bondarenko v. Belarus*; No. 1138/2002, *Arenz et al. v. Germany*, admissibility decision.

admissibility and that the claims are thus inadmissible pursuant to article 2 of the Optional Protocol.

6.3 The Committee also notes the author's allegation of unlawful detention and not being informed of the charges against him for more than a week under article 9, paragraphs 1 and 2, of the Covenant. It further notes the author's allegations under article 14, paragraph 3 (b and e), that he had no legal defense for a period of three months; he was not able to communicate with the lawyer assigned to him; and he was not represented by the lawyer of his own choice, while the assigned lawyer was not licensed for law practice. The Committee notes, however, that the author did not substantiate these allegations in his initial communication and The Committee was not able to re-establish contact with the author to obtain further information despite numerous attempts. In these circumstances, the Committee considers that the author's claims are not sufficiently substantiated for purposes of admissibility and that the claims are thus inadmissible pursuant to article 2 of the Optional Protocol.

6.4 With regard to the author's allegations under article 6, paragraphs 1 and 2, the Committee notes the State party's submission that the author's death sentence was commuted to 20 years' imprisonment. In light of this, and given the Committee's conclusion on the absence of a violation of the author's rights under article 14 of the Covenant in the present case, the Committee considers that this part of the communication is also inadmissible, under article 2 of the Optional Protocol.

7. The Committee therefore decides:

- a) That the communication is inadmissible under article 2 of the Optional Protocol;
- b) That this decision shall be communicated to the State party and to the author.

[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.]
