



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-ninth session
12 – 30 March 2007

VIEWS

Communication 1348/2005

<u>Submitted by:</u>	Rozik Ashurov (represented by counsel, Solidzhon Dzhuraev)
<u>Alleged victims:</u>	The author's son, Olimzhon Ashurov
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	7 June 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 20 January 2005 (not issued in document form)
<u>Date of adoption of Views:</u>	20 March 2007

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of long-term imprisonment after arbitrary detention; unfair trial; torture.

Substantive issues: Torture, cruel, inhuman or degrading treatment or punishment; arbitrary detention; right to be brought promptly before a judge / officer authorized by law to exercise judicial power; fair hearing; impartial tribunal; right to be presumed innocent; right to be promptly informed of charges; right to adequate time and facilities for the preparation of the defence; right to examine witnesses; right not to be compelled to testify against oneself or to confess guilt; right to have a sentence and conviction reviewed by a higher tribunal.

Procedural issue: Non-substantiation

Articles of the Covenant: articles 7; 9, paragraphs 1, 2 and 3; 14, paragraphs 1, 2, 3(a), 3(b), 3(e), 3(g) and 5

Article of the Optional Protocol: article 2

On 20 March 2007, 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. 1348/2005.

[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-ninth session

concerning

Communication 1348/2005**

<u>Submitted by:</u>	Rozik Ashurov (represented by counsel, Solidzhon Dzhuraev)
<u>Alleged victims:</u>	The author's son, Olimzhon Ashurov
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	7 June 2004 (initial submission)

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

Meeting on 20 March 2007,

Having concluded its consideration of communication No. 1348/2005, submitted to the
Human Rights Committee on behalf of Olimzhon Ashurov 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. The author of the communication is Rozik Ashurov, a Tajik national of Uzbek origin born
in 1934, who submits the communication on behalf of his son, Olimzhon Ashurov, also a Tajik
national of Uzbek origin born in 1969, who currently serves a 20 year prison term in a prison in
Tajikistan. The author claims that his son is a victim of violations by Tajikistan of his rights
under article 7; article 9, paragraphs 1, 2 and 3; and article 14, paragraphs 1, 2, 3 (a), (b), (e), and

** The following members of the Committee participated in the examination of the present
communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice
Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil, Ms. Zonke
Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez
Sanchez-Cerro, Mr. Rafael Rivas Posada and Sir Nigel Rodley.

(g), and 5 of the International Covenant on Civil and Political Rights.¹ He is represented by counsel, Solidzhon Dzhuraev.

The facts as submitted by the author

2.1 The author's son was detained by officers of the Criminal Investigation Department of the Tajik Ministry of Interior (hereinafter, MoI) at the family home in Dushanbe at around 5 a.m. on 3 May 2002, in connection with an armed robbery which had occurred on the night of 5 to 6 May 1999 in the apartment of one Sulaymonov. A criminal case under article 249, part 4, paragraphs (a), (b) and (c) of the Tajik Criminal Code (hereinafter, the CC)² was opened on 6 May 1999. On 6 July 1999, an investigator decided to suspend the investigation, because it was not possible to identify a suspect who could be prosecuted.

2.2 At the time of detention, the author's son was not informed of the reasons, nor was the family told where he was being taken. In fact, he was taken to the MoI where for the next three days he was subjected to torture, to force him to confess to the armed robbery of Sulaymonov's apartment. He was deprived of food and sleep; was placed in handcuffs which were then attached to a battery; was systematically beaten; and electric shocks were applied to his genitals and fingers. The author states that, unable to withstand the torture, his son gave a false confession on 5 May 2002. Handcuffed and in the absence of a lawyer, he was forced to sign the protocol of interrogation, and then to write a confession that was dictated by the investigator of the Section of Internal Affairs of Zheleznodorozhny district of Dushanbe, implicating himself and two of his friends, Shoyardonov and Mirzogulomov. The same day, he was forced to sign the protocol of confrontation with Sulaymonov and the protocol of verification of his testimony at the crime scene. The verification process was video taped; marks of torture on his face are visible on the video recording of 5 May 2002.

2.3 The detention protocol was drawn up by the investigator at 11:30 p.m. on 5 May 2002. At no stage were his rights explained to the author's son. In particular, he was not advised of his right to counsel from the moment of detention. Subsequently, he was not allowed to choose counsel. Instead, the investigator appointed his former assistant to represent the author's son during the pre-trial investigation. On 6 May 2002, the investigator requested the expert Toirov to tamper with the evidence by certifying that the fingerprints allegedly collected from Sulaymonov's apartment belonged to Olimzhon Ashurov. The latter fact was subsequently confirmed by Toirov himself in his written explanation to the Minister of Interior and acknowledged by the MoI letters of 10 February and 11 March 2004, addressed to the author's son and his counsel. On an unspecified date, the arrest of the author's son was endorsed by the prosecutor on the basis of the evidence presented by the investigator.

2.4 The trial took place in the Dushanbe city court from October 2002 to April 2003 (hereinafter, the 'first trial'). The author's son complained about being subjected to torture by the MoI officers. On 4 April 2003, the court referred the case to the Dushanbe City Prosecutor for

¹ The Optional Protocol entered into force for the State party on 4 April 1999.

² At the time of consideration of the case of the author's son by the Tajik courts, the punishment provided under this article was a term of 15 - 20 years' imprisonment with confiscation of property or death penalty.

further investigation, instructing him to examine Ashurov's torture allegations and to clarify gaps and discrepancies in the investigation of the case. The court decided that Ashurov should remain in custody. It transpires from the decision that the court found clear contradictions between the circumstances of the armed robbery described in Ashurov's indictment and the testimonies of Sulaymonov before the court. The court noted that the investigation had not established the identity of the person standing trial: Ashurov's lawyer presented to the court certificate No.005668, confirming that from 7 December 1996 to 15 July 1999, his client served a sentence in Kyrgyzstan. An inquiry by the Tajik Judicial College in Kyrgyzstan confirmed that Ashurov indeed was imprisoned in Kyrgyzstan, having been sentenced by the Osh Regional Court on 26 March 1997.

2.5 Contrary to the court ruling of 4 April 2003, the very investigator who attended Ashurov's mistreatment by MoI officers and who was suspected of having tampered with earlier evidence, was effectively commissioned to conduct further investigations into the case. The author states that this investigator once more tampered with evidence, destroying certain key documents in the case file. These documents included a certificate issued by the head of colony No.64/48 in Uzbekistan, which confirms that from 5 May 1997 to 5 August 1999, Ashurov's accomplice Shoyardonov served a sentence handed down by the Surkhandarya Regional Court in the Uzbek prisons Nos.64/48 and 64/1.

2.6 The author states that the deadline for his son's preventative detention expired on 12 August 2003; examination of the case materials by Ashurov and his counsel was completed on 31 August 2003; and the case was sent to court on 23 September 2003. Nonetheless, the investigator *de facto* illegally extended the term of his son's placement in and continued to backdate investigative actions, without officially reopening the investigation.

2.7 When the trial presided by the Deputy Chairperson of the Dushanbe city court resumed in October 2003 (hereinafter, the 'second trial'), the author's son and his counsel submitted two petitions complaining about torture and tampering with evidence by the investigator. They requested the court to inform them of the legal grounds for keeping Ashurov in custody between 31 August and 23 September 2003; to allow them to study all case file documents, and to instruct the investigative bodies to translate the indictment into Russian, as neither the accused, nor one of the two counsel for Ashurov mastered Tajik. Both petitions were ignored.

2.8 On 13 - 15 October 2003, the court hearing was conducted in the absence of the first counsel, who spoke Tajik, and without an interpreter. In the absence of the Tajik speaking counsel, the judge changed the transcript of the proceedings to state that on 13 October 2003, the accused and his other counsel, who did not speak Tajik, had the opportunity to study all case file documents, most of which were in Tajik. Ashurov and both of his counsel repeatedly requested the court to allow them to study all case file materials, with the help of an interpreter. All requests were rejected. For unknown reasons, the judge then sought to exclude the Tajik-speaking counsel from further participation in the case, allegedly saying that it would not matter which of the two counsel represented him, because he "would be found guilty in any event". The judge acted in an accusatory manner and effectively replaced the passive and unprepared prosecutor. He followed the indictment verbatim and rejected all key arguments and requests of the defence. He asked leading questions to prosecution witnesses, corrected and completed their answers and instructed the court's secretary to record only those testimonies establishing

Ashurov's guilt. Ashurov and both of his counsel three times moved for the court to step down but these motions were rejected.

2.9 At the trial, witnesses who had consistently before and during the first trial stated that they did not know or could not identify Ashurov as the perpetrator retracted their statements and implicated him in the crime. Although the defence team could not participate in the final hearing and Ashurov's guilt was not proven in the court, on 11 November 2003, he was convicted of armed robbery and was sentenced to 20 years' imprisonment.

2.10 During the second trial, the court was also partial and biased in evaluating facts and evidence in Ashurov's case. Contrary to what is stated in the judgment of 11 November 2003, neither Ashurov, nor Shoymardonov and Sulaymonov, were in Dushanbe on that day. All three were at that time serving prison terms in other countries. In addition to certificate No.005668, the defence team presented additional evidence, confirming that Ashurov was released from prison in Kyrgyzstan on 17 July 1999, i.e. more than two months *after* the armed robbery in Tajikistan occurred. The defence requested the court to examine two witnesses that could have confirmed that Ashurov was permanently at that prison from 5 August 1998 to 17 July 1999. The request was rejected, as the court held that Ashurov did not really serve the sentence there, that he managed to obtain a passport in Tajikistan on 30 December 1998, and flew from Dushanbe to Khudzhand between January and March 1999.

2.11 The defence team also requested additional interviews of the investigator and the MoI officers who subjected Ashurov to torture and a screening of video recording of 5 May 2002. This was rejected by the court. The court ignored the defence's documentary evidence and testimony of defence witnesses and based its judgment on Ashurov's coerced confession.

2.12 Ashurov's appeal to the Judicial College of the Supreme Court of 20 November 2003 and 29 January 2004 was dismissed on 10 February 2004.

2.13 On an unspecified date, and on appeal from Ashurov's counsel, the Deputy General Prosecutor initiated a review procedure before the Presidium of the Supreme Court, requesting the repeal of Ashurov's sentence. The counsel requested the Presidium of the Supreme Court to attend the consideration of the case, to present material evidence that had disappeared from the case file. Counsel did not receive a reply to his request. On 12 September 2004, the Presidium of the Supreme Court dismissed the Deputy General Prosecutor's request.

The complaint

3.1 The author claims that his son is a victim of violation of his rights under article 7 of the Covenant, as during the first three days following his detention, he was tortured by the MoI officers to make him confess, in violation of article 14, paragraph 3(g). All challenges to the voluntary character of the confessions he and counsel made in court were rejected.

3.2 The author further claims that article 9, paragraphs 1, 2 and 3, was violated in his son's case, as he was detained on 3 May 2002 without being informed of the reasons and the detention protocol was drawn up only on 5 May 2002. His pre-trial detention was endorsed by the public prosecutor and subsequently renewed by the latter on several occasions, except for the period

from 31 August to 23 September 2003 when his placement into custody was without any legal basis.

3.3 Article 14, paragraph 1, is said to have been violated, because the judge presiding over the second trial conducted the trial in a biased manner, asked leading questions, instructed the court secretary to modify the trial's transcript against the truth and only partially evaluated facts and evidence.

3.4 Ashurov's presumption of innocence, protected by article 14, paragraph 2, was violated, because during the second trial on 13 October 2003, the presiding judge commented that "he would be found guilty in any event". That the main prosecutorial evidence – i.e. the match between the fingerprints collected at the crime scene and those of the author's son – had been forged by the expert upon pressure from the investigator, was recognized by the State party's authorities themselves in February 2004. Moreover, Ashurov was serving a sentence in Kyrgyzstan and his accomplice Shoymardonov was serving a prison term in Uzbekistan when the armed robbery occurred.

3.5 The author further claims that his son is a victim of a violation of article 14, paragraph 3(a). Being a native Uzbek speaker, he could not, during the pre-trial investigation, understand the indictment available only in Tajik language. Moreover, the first three days of the second trial were conducted in Tajik and without an interpreter, although neither Ashurov nor one of the two lawyers of the defence team mastered Tajik.

3.6 Article 14, paragraph 3(b), is said to have been violated, because Ashurov was deprived of his right to legal representation from the moment of arrest. Subsequently, he was *de facto* denied this right during the pre-trial investigation. During the second trial, Ashurov and his defence were only given 1-2 hours to study the case materials in the Tajik language, while the presiding judge sought to exclude the counsel who did speak Tajik from further participation in the case.

3.7 During the trial, the author's son and his counsel's motions for the examination of witnesses on his behalf were rejected by the court without any justification, contrary the guarantee of article 14, paragraph 3(e).

3.8 Finally, the author claims that the Judicial College of the Supreme Court refused to consider the defence's documentary evidence, thus not properly reviewing his son's conviction and sentence within the meaning of article 14, paragraph 5.

Absence of State party cooperation

4. By Notes Verbales of 20 January 2005, 15 February 2006 and 19 September 2006, the State party was requested to submit to the Committee information on the question of admissibility and the merits of the communication. The Committee notes that this information has still not been received. It regrets the State party's failure to provide any information with regard to the admissibility or the merits of the author's claims, and recalls that it is implicit in the Optional Protocol that States parties make available to the Committee all information at their

disposal.³ In the absence of any observations from the State party, due weight must be given to the author's allegations, to the extent that these have been sufficiently substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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 case is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. Concerning the requirement of exhaustion of domestic remedies, the Committee has noted that according to the information submitted by the author, all available domestic remedies up to and including the Supreme Court have been exhausted. In the absence of any State party's objection, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met.

5.3 With regard to the author's allegation under article 14, paragraph 5, that his son's right to have his sentence reviewed by a higher tribunal according to law was violated, the Committee considers that the author has not substantiated this claim, for the purposes of admissibility. Hence, this part of the communication is inadmissible under article 2 of the Optional Protocol.

5.4 The Committee considers that the author's remaining claims have been sufficiently substantiated for purposes of admissibility, and declares them admissible.

Consideration of the merits

6.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol.

6.2 The Committee has taken note of the author's allegations that his son was beaten and subjected to torture by the MoI investigators, to make him confess, and that torture marks were visible on the video recoding of 5 May 2002. The author also brought the allegations of torture repeatedly and without success to the attention of the authorities. In the absence of any State party information, due weight must be given to the author's allegations. In light of the detailed and uncontested information provided by the author, the Committee concludes that the treatment that Olimzhon Ashurov was subjected to was in violation of article 7 of the Covenant.

6.3 As abovementioned acts were inflicted on Olimzhon Ashurov to force him to confess a crime for which he was subsequently sentenced to 20 years' imprisonment, the Committee

³ See, *inter alia*, [Khomidova v. Tajikistan](#), Communication No.1117/2002, Views adopted on 29 July 2004; [Khalilova v. Tajikistan](#), Communication No.973/2001, Views adopted on 30 March 2005; and [Aliboeva v. Tajikistan](#), Communication No.985/2001, Views adopted on 18 October 2005.

concludes that the facts before it also disclose a violation of article 14, paragraph 3(g), of the Covenant.

6.4 The author has claimed that his son was arrested on 3 May 2002 without being informed of the reasons and the detention protocol was drawn up only on 5 May 2002. His pre-trial detention was prolonged by the public prosecutor on several occasions, except for the period from 31 August to 23 September 2003 when his preventive detention had no legal basis. The Committee notes that the matter was brought to the courts' attention and was rejected by them without explanation. The State party has not advanced any explanations in this respect. In the circumstances, the Committee considers that the facts before it disclose a violation of the author's son's rights under article 9, paragraphs 1 and 2, of the Covenant.

6.5 The Committee notes that the pre-trial detention of the author's son was approved by the public prosecutor in May 2002, and that there was no subsequent judicial review of the lawfulness of his detention until April 2003.⁴ The Committee recalls that article 9, paragraph 3, entitles a detained person charged with a criminal offence to judicial control of his/her detention. It is inherent in 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.⁵ In the circumstances of the case, the Committee is not satisfied that the public prosecutor can 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, and concludes that there has been a violation of this provision.

6.6 The Committee notes the author's claim that the trial of his son was unfair, as the court was not impartial⁶, and the judge presiding over the second trial conducted it in a biased manner, asked leading questions, gave instructions to modify the trial's transcript in an untruthful way and sought to exclude the Tajik-speaking lawyer from participation in the case. The Committee has noted the author's contention that his son's counsel requested the court, *inter alia*, properly to examine the torture claim; to allow the defence sufficient time to study the case file with the help of an interpreter; to instruct the investigative bodies to translate the indictment into Tajik; and to call witnesses on his behalf. The judge denied all requests without giving reason. On appeal, the Supreme Court did not address the claims either. In the present case, the facts presented by the author, which were not contested by the State party, show that the State party's courts acted in a biased and arbitrary manner with respect to the above mentioned complaints and did not offer Ashurov the minimum guarantees of article 14, paragraph 3 (a), (b) and (e). In the circumstances, the Committee concludes that the facts before it disclose a violation of article 14, paragraphs 1, and 3 (a), (b) and (e), of the Covenant.

6.7 In relation to the author's claim that his son was not presumed innocent until proved guilty, the author has made detailed submissions which the State party has failed to address. In such circumstances, due weight must be given to the author's allegations. The author points to many

⁴ See paragraph 2.4 above.

⁵ Kulomin v. Hungary, Communication No. 521/1992, Views adopted on 22 March 1996, para. 11.3, Platonov v. Russian Federation, Communication No. 1218/2003, Views adopted on 1 November 2005, para. 7.2.

⁶ See paragraphs 2.7 – 2.11 above.

circumstances which he claims demonstrate that his son did not benefit from the presumption of innocence.⁷ The Committee recalls its jurisprudence that it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, or to examine the interpretation of domestic legislation by national courts and tribunals, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or amounted to a denial of justice.⁸ The Committee also recalls its General Comment No.13, which reiterates that by reason of the principle of presumption of innocence, the burden of proof for any criminal charge is on the prosecution, and the accused must have the benefit of the doubt. His guilt cannot be presumed until the charge has been proven beyond reasonable doubt. From the uncontested information before the Committee, it transpires that the charges and evidence against the author's son left room for considerable doubt, while their evaluation by the State party's courts was in itself in violation of fair trial guarantees of article 14, paragraph 3. There is no information before the Committee that, despite their having been raised by Ashurov and his defence, these matters were taken into account either during the second trial or by the Supreme Court. In the absence of any explanation from the State party, these concerns give rise to reasonable doubts about the propriety of the author's son's conviction. From the material available to it, the Committee considers that Ashurov was not afforded the benefit of this doubt in the criminal proceedings against him. In the circumstances, the Committee concludes that his trial did not respect the principle of presumption of innocence, in violation of article 14, paragraph 2.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, finds that the facts before it disclose violations of the rights of the author's son under article 7; article 9, paragraphs 1, 2 and 3; and article 14, paragraphs 1, 2, 3 (a), (b), (e) and (g), of the Covenant.

8. 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, i.e. immediate release, appropriate compensation, or, if required, the revision of the trial with all the guarantees enshrined in the Covenant, as well as adequate reparation. The State party is under an obligation to prevent similar violations in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, Tajikistan has recognised the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive, within ninety days, information from the State party about the measures taken to give effect to the Committee's Views. The State party is requested also to give wide publicity to the Committee's Views.

⁷ See paragraphs 2.3, 2.5, 2.8 – 2.9 above.

⁸ Romanov v. Ukraine, Communication No.842/1998, inadmissibility decision of 30 October 2003; Arutyuniantz v. Uzbekistan, Communication No.971/2001, Views adopted on 30 March 2005, para. 6.5.

[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.]
