



**International covenant
on civil and
political rights**

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

VIEWS

Communication No. 1071/2002

<u>Submitted by:</u>	Mrs. Nadezhda Agabekova (not represented by counsel)
<u>Alleged victim:</u>	Valery Agabekov, author's son
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	11 April 2002 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 11 April 2002 (not issued in document form)
<u>Date of adoption of Views:</u>	16 March 2007

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of death sentence after unfair trial; duty to investigate allegations of ill-treatment

Substantive issue: Torture; Unfair trial; Right to life

Procedural issues: Evaluation of facts and evidence; substantiation of claim

Articles of the Covenant: 6; 7; 10; 14; 15; 16

Article of the Optional Protocol: 2

On 16 March 2007, 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. 1071/2002.

[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 No. 1071/2002**

Submitted by: Mrs. Nadezhda Agabekova (not represented by
counsel)

Alleged victim: Valery Agabekov, author's son

State party: Uzbekistan

Date of communication: 11 April 2002 (initial submission)

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

Meeting on 16 March 2006,

Having concluded its consideration of communication No. 1071/2002, submitted to the
Human Rights Committee on behalf of Mr. Valery Agabekov 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 is Mrs. Nadezhda Agabekova, an Uzbek national born in 1953. She submits the
communication on behalf of her son, Valery Agabekov, also an Uzbek national, born in 1975,
who at the time of submission of the communication was sentenced to death by the Tashkent

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

Regional Court. The author claims that her son is a victim of violation by Uzbekistan, of his rights under articles 6; 7; 10; 14; 15; and 16, of the Covenant¹. She is unrepresented.

1.2 On 11 April 2002, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party not carry out Mr. Agebekov's execution while his case is under consideration. On 30 May 2002, the State party replied that the alleged victim's death sentence was commuted to 20 years' imprisonment on 23 April 2002, and that following an Amnesty Act, his prison term was further reduced by one third.

The facts as presented by the author

2.1 On 29 January 2001, the author's son and his brother in law, Annenkov, were arrested as suspects in relation to the murder and robbery, on 27 January 2001, of their acquaintance M. and his companion S.

2.2 In an attempt to force them to confess their guilt, both suspects were allegedly beaten and tortured by the investigators during the initial stages of the investigation. The author provides 3 undated letters from her son, in which he claims to be innocent of the crime and affirms that he was only waiting in front of the door of the apartment of the murdered individuals, while it was Annenkov who entered in the apartment and killed them after an argument over money at around 7 a.m. on 27 January 2001. Only after the murder was he brought into the apartment by his brother-in-law. He provides details of the alleged ill-treatment and torture he was subjected to during the first week of the investigation: he claims he was beaten and investigators attempted to rape him while he was handcuffed to a radiator, and because he resisted they knocked his head onto the radiator. He alleges he was beaten with a plastic bag placed on his head to make him suffer additionally as he was prevented from breathing. He alleges that when he asked for a medical doctor, the investigators told him that they only could call for a grave-digger. He states that his brother in law was also beaten, and as a result suffered broken ribs and urinated blood.

2.3 The author affirms that she visited her son (on an unspecified date) in the Temporary Detention Isolation Centre in Akhangaran City, and found him to be in very poor condition: his head and hair were coated with blood, his face was bloated and distorted, he could not talk and was barely able to move his lips. He whispered that he felt pain everywhere, that he was unable to walk or stand, that he urinated blood, and that he could not talk because his jaw was either dislocated or broken. The author requested the penitentiary authorities to have her son examined by a medical doctor, but was answered that once in prison, he would have his face treated with "zelionka" (a green antiseptic). They allegedly told her that such treatment was usually reserved to prisoners on death row.

2.4 The preliminary investigation was concluded on 8 May 2001. Both Agabekov and Annekov were charged with murder, robbery, and with illegal acquisition and storing of large amounts of heroin.

2.5 On 18 September 2001, the Tashkent Regional Court found Agabekov and his co-accused guilty of committing a premeditated attack, acting in a group, and murdering the two individuals

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

to take over their possessions, under aggravating circumstances, and of illegal acquisition and storage of heroin. The court sentenced them to death, with a confiscation of their property.

2.6 According to the author, at the beginning of the trial, her son complained about the torture and ill-treatment suffered and requested an investigation and a medical examination, but the presiding judge rejected his claims, arguing that “he was a murderer” and he was only trying to avoid criminal liability.

2.7 On 12 November 2001, the Appeal Chamber of the Tashkent Regional Court modified the sentence, excluding the confiscation of property part. The death sentences were however upheld.

2.8 The author states that when she visited her son on 11 April 2002, she learned that he was made to sign a renunciation of any entitlement to request a presidential pardon. When she asked for clarifications, she was told by the prison authorities that “when a person does not admit his/her guilt, he/she must renounce any request for a pardon”².

2.9 On 23 April 2002, the Supreme Court of Uzbekistan modified the sentences of both Agabekov and Annenkov and commuted the death sentences to 20 year prison term. The Amnesty Act of 22 August 2001 was also applied to them, and the remaining part of their sentence to be served was reduced by one third.

The complaint

3.1 The author claims that in violation of article 6 of the Covenant, the Tashkent Regional Court imposed her son’s death sentence arbitrarily, notwithstanding that the law provided a prison term as a possible alternative³ (15 to 20 years’ imprisonment). After his conviction, he was allegedly made to sign a statement that he renounced the right to seek a Presidential pardon.

3.2 The author claims that her son was tortured and ill-treated by investigators, to force him to confess guilt. Her son requested the trial court to order an investigation and a (medical) examination of the result of the beatings, but the request was rejected. During the preliminary investigation, both her son and the author requested, without result, to have a medical doctor take care of him. This part of the communication appears to raise issues under articles 7 and 10, of the Covenant, even though the author does not invoke these provisions specifically.

3.3 According to the author, her son’s trial did not meet the requirements of due process. She claims that (a) the presiding judge had determined her son’s guilt before the end of the trial; (b) evidence were not examined in depth, nor objectively; (c) her son’s conviction was based primarily on Annenkov’s testimony, notwithstanding the murder knife was found in Annenkov’s home; (d) the investigators did not reconstruct the crime, interrogated only Annenkov at the

² The case file contains however copies of two requests for Presidential pardon of the author’s son’s death sentence, one signed by the author and dated 12 April 2002, and another one, undated, and signed by four of her neighbours, both addressed to the President’s Office.

³ The author refers in this relation to a Ruling of the Plenum of the Supreme Court of 20 December 1996, pursuant to which death penalty constitutes an exceptional measure of punishment, and in cases of murder with aggravating circumstances the law admits it, but does not require its compulsory imposition.

scene of the crime, and neither the investigation nor the court established who exactly murdered the victims; (e) the trial court fully accepted the prosecution charges, thus demonstrating that the trial was biased; (f) during the trial, the presiding judge constantly humiliated the two co-accused, interrupted Agabekov and commented on his answers, thus failing in his duty of impartiality.

3.4 The author argues that her son's sentence was determined without taking into account information about his personality and circumstances – i.e. that he has a young child and has a good reputation both at home and at work. The court did not take into account the fact that prior to the murder, M. had also committed unlawful acts.

3.5 Mr. Agabekov's presumption of innocence was allegedly violated, as he was obliged to prove his innocence, and the court established his guilt on the basis of indirect evidence. Article 463 of the Uzbek Criminal Code stipulates that convictions may only be grounded on evidence upon verification of all possible circumstances of the commission of the crime. The author states that the courts simply ignored doubts in relation to her son's guilt.

3.6 According to the author, the trial court wrongly held that the murder had been committed "with particular violence". The "particular violence" prerequisite relates only to cases where the victim is subjected to torture or humiliation. In her son's case, according to the author, the victims were not subjected to torture but died instantly.

3.7 Finally, and without further substantiating the claim, the author affirms that her son is also a victim of violations of his rights under articles 15 and 16 of the Covenant.

State party's observations

4.1 The State party presented its observations on 30 May 2002. It recalls that on 18 September 2001, Mr. Annenkov and his co-accused were found guilty and sentenced to death, with a confiscation of property, by the Tashkent Regional Court of having murdered and robbed Mr. M. and his companion S. Under the pretext of borrowing money from their victims, they came to M.'s apartment and there they administered several stabs with a knife to both victims, in a particularly violent manner. The victims died from the injuries and due to blood loss. After having taken 28 000 sums and electric interrupters valued at 4600 sums, they left. Later in the day, they bought six doses of heroin from one K., and after having injected themselves with four, kept the remaining two with them. These were later seized from Annenkov's apartment.

4.2 On 12 November 2001, the Tashkent Regional Court re-qualified the crimes in relation to the murders⁴, but maintained the death sentences. On 23 April 2002, the Supreme Court quashed the sentences of death and commuted them to 20 years' imprisonment.

⁴ In fact, as far as the robbery is concerned, initially, on 18 September 2001, the Tashkent Regional Court has sentenced the author's son to 14 years' of imprisonment with confiscation of his property, under article 164, part 3 (b) (robbery made by a particularly dangerous recidivist) ; the possible sanction was between 15 and 20 years' of imprisonment. On 12 November 2001, the appeal instance of the same Court modified the judgment, by sentencing him, in relation to the robbery, to 10 years' of imprisonment under article 164, part 2 (a, b) instead (robbery made by

Author's comments on the State party's observations

5.1 The author presented comments on 30 August 2002. She confirms that her son was removed from death row on 10 May 2002. She notes that the State party's reply does not contain information on investigations undertaken in relation to her son's torture and ill-treatment by the police officials of the Regional Department of the Ministry of Internal Affairs of Akhangaran City. She recalls that her son sustained severe injuries during the preliminary investigation, and when he complained about it in court and gave the names of those responsible (the Chief of the Criminal Search Department, R.Kh, his subordinates, and an investigator from the Prosecution's Office, F.) , the court replied that these allegations amounted to a defence strategy.

5.2 The author states that her son never confessed guilt, neither during the investigation nor in court, and that he was only a witness at the crime scene, and that there was no direct evidence of his involvement in the murders. Under article 23 of the Uzbek Criminal Code, an accused does not have to prove his innocence. All doubts about guilt must be weighed in favour of the accused. However, according to her, in her son's case, the court failed to respect these principles.

5.3. By letters of 20 September 2004, 16 June 2005 and 18 November 2006, the author was requested to submit supplementary information. No reply was received. On 4 December 2006, the author informed the Committee that her son remains imprisoned in a penitentiary colony in Akhangaran City.

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.

6.2 The Committee notes that the same matter is not being examined under any other international procedure, as required by article 5, paragraph 2 (a), of the Optional Protocol, and that the State party has not presented any objection on the issue of non-exhaustion of domestic remedies.

6.3 The author invokes a violation of her son's right under article 6, of the Covenant, since he was sentenced to death without any possibility of an alternative sentence and, later he was made to sign a statement renouncing his right to seek a pardon. The State party has not commented on these allegations. The Committee notes that the author's son's death sentence was commuted to 20 years' imprisonment by the Supreme Court on 23 April 2002. Moreover, and notwithstanding the content of paragraph 2.8 above, the Committee notes, that the author, on 12 April 2002, did file a pardon application with the President's office, and another such application was filed by four of her neighbours on an unspecified date. In the circumstances, and in the absence of any other pertinent information by the parties in this regard, the Committee considers that the author

an organised criminal association (crime, for which the law provided 10 to 15 years' of imprisonment).

has failed to sufficiently substantiate her claim, for purposes of admissibility. This part of the communication is therefore inadmissible under article 2, of the Optional Protocol.

6.4 The Committee notes the author's allegations under article 14 set out in paragraphs 3.3-3.7 above, that were not refuted by the State party. It observes, however, that these allegations relate primarily to the evaluation of facts and evidence by the courts. It recalls 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 justice⁵. In the absence of other pertinent information that would show that evaluation of evidence indeed suffered from such deficiencies in the present case, as well as in the absence of a copy of any court record, or copies of the complaints filed in this connection or information on the authorities' reaction to such complaints, the Committee considers this part of the communication to be inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that the author's allegation that her son is a victim of violations of articles 15 and 16 is inadmissible under article 2 of the Optional Protocol as it has not been sufficiently substantiated.

6.6 The Committee finds the remaining part of the author's allegations that appear to raise issues under articles 7 and 10 in the light of paragraphs 2.2-2.3, 2.6 and 3.2 above, to be sufficiently substantiated for purposes of admissibility.

Consideration of the merits

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

7.2 The author claims that her son was tortured and ill-treated by the investigators to make him confess guilt, that he was refused medical care in detention, and that when he complained about torture in court, the presiding judge refused to order an inquiry or request a medical examination. The Committee recalls that once a complaint against maltreatment contrary to article 7 is lodged, a State party is under a duty to investigate it promptly and impartially⁶. In the absence of any information by the State party, in particular in relation to any inquiry made by the authorities both in the context of the author's son's criminal case or in the context of the present communication, and in light of the detailed description provided by the author of how her son was ill-treated by investigators, the methods of torture used, and the names of those responsible, due weight must be given to the author's allegations. In the circumstances of the case, the Committee concludes that the facts as presented disclose a violation of article 7 of the Covenant.

7.3 In light of the above conclusion, the Committee does not consider it necessary to examine the author's claim under article 10.

⁵ See, *inter alia*, Communication No 541/1993, *Errol Simms v. Jamaica*, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

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

8. 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 the author's son's rights under article 7 of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Agabekov with an effective remedy, including compensation. The State party is also under an obligation to prevent similar violations in the future.

10. 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.]
