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HUMAN RIGHTS COMMITTEE
Ninety-second session
17 March-4 April 2008

DECISION

[Original: FRENCH]

Communication No. 1141/2002

Submitted by:	Rima Gougnina (not represented by counsel)
Alleged victim:	Mr. Evgeny Gougnin (the author's son) and Mr. Ilkhomdzhon Karimov
State party:	Uzbekistan
Date of communication:	13 December 2002 (initial submission)
Document references:	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 13 December 2002 (not issued in document form)
Date of adoption of decision:	1 April 2008

* Made public by decision of the Human Rights Committee.

*Subject matter:*Imposition of death sentence after unfair trial with resort to torture during preliminary investigation

*Substantive issue:*Torture; unfair trial; arbitrary deprivation of life

*Procedural issues:*Evaluation of facts and evidence

Articles of the Covenant: 6; 7; 9; 10; 14 and 16

*Article of the Optional Protocol:*2

[ANNEX]

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Ninety-second session

concerning

Communication No. 1141/2002[*]

Submitted by:	Rima Gougnina (not represented by counsel)
Alleged victim:	Mr. Evgény Gougnin (the author's son) and Mr. Ilkhomdzhon Karimov
State party:	Uzbekistan
Date of communication:	13 December 2002 (initial submission)

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

Meeting on 1 April 2008,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The author of the communication is Rima Gougnina, a national of Uzbekistan born in 1962. She is submitting the communication on behalf of her son, Evgeny Gougnin, and an acquaintance of her son's, Ilkhomdzhon Karimov[1], both of whom are nationals of Uzbekistan born in 1980. At the time when the communication was submitted to the Committee, the alleged victims were facing execution, as they had been sentenced to death by Tashkent city court on 28 October 2002. The author claims that her son and Mr. Karimov are victims of violations by Uzbekistan of articles 6, paragraphs 1, 4 and 6; 7; 9; 10; 14, paragraphs 1 to 3; and 16 of the Covenant. The author is not represented by counsel.

[*] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

[1] At the time of registration of the complaint, Mr. Karimov was on death row and risked execution, and no contact details with his family were available.

1.2 When registering the communication on 13 December 2002, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, and in pursuance of rule 92 of its rules of procedure, requested the State party not to execute the alleged victims while their case was under examination. On 11 December 2003 and 25 May 2004, the State party informed the Committee that, by decision of the Supreme Court, the death sentences imposed on Mr. Karimov and Mr. Gougnin had been commuted to 20 years' imprisonment on 18 February 2003 and 26 March 2004 respectively.

The facts as submitted by the author

2.1 On 28 October 2002, Tashkent city court found Mr. Gougnin, Mr. Karimov and a certain Ismailov guilty of planning and carrying out an armed attack in the flat of a certain Chakirov on 8 April 2002 with the aim of stealing money. Chakirov died from knife wounds sustained during the attack. His partner, Akhundzhanova, also died, one week later, from injuries received while trying to intervene.

2.2 Tashkent city court sentenced the alleged victims to death. Mr. Ismailov was sentenced to 20 years' imprisonment. This ruling was upheld on appeal on 10 December 2002 by the appeals chamber of the same court, sitting with different members. On 18 February 2003, the Supreme Court also reviewed the case and upheld the sentences.

2.3 The author acknowledges that her son and Mr. Karimov took part in the attack, but contends that they did not commit the murder. They confessed as a result of coercion and torture following their arrest. According to the author, the alleged victims were beaten and tortured not only by police officers, but also by relatives of Chakirov, the victim.

2.4 The author adds that her son, Karimov and Ismailov had agreed to carry out the theft. The plan was reportedly prepared by a certain Pokrepkin, a friend of Chakirov's son, who knew that Chakirov's father had large sums of money. On the evening of 8 April 2002, Pokrepkin, the author's son and Ismailov went to Chakirov's home; Karimov, it seems, did not go. Pokrepkin and the author's son had previously obtained kitchen knives. When Pokrepkin rang at the door and Mr. Chakirov opened it, Pokrepkin tried to knock him out with a punch, but without success. Chakirov reportedly took refuge within the flat, and Pokrepkin followed him. According to the author, her son and Ismailov then fled.

2.5 Later, Pokrepkin allegedly contacted them in Karimov's flat and arranged to meet them in a house in the country, where it is claimed he told them that he had killed Chakirov and his partner. He allegedly told them that if the police managed to trace them, they should claim that it was Karimov who had organized the crime, and that Gougnin had committed the murder. Pokrepkin is also said to have told them that the court would sentence them to 15 years' imprisonment at most.[2] The three did not want to accept these proposals, but Pokrepkin is said to have threatened them with reprisals and to have said that he would also take it out on their families, "since he had nothing left to lose".

[2] Pokrepkin allegedly also promised to give each of the three large sums of money and to provide them with help during the trial and support in prison.

2.6 The author points out that the preliminary investigation was superficial and was carried out "in a particularly accusatory manner". She then cites a court ruling dating from 1996 in which the Supreme Court is said to have held that evidence obtained through unlawful methods was inadmissible. The author claims that this principle was not respected in the case of her son and Mr. Karimov, since they were beaten and forced to confess. She says that her son had not mentioned the acts of torture and the forced confession in court because he feared that his family would be subjected to reprisals by Pokrepkin.

2.7 According to the author, it was only after the appeal court ruling, and after he had arranged a visit from his mother, at which he learned that his family had not received any money from Pokrepkin, that her son had decided to tell the truth. He allegedly then explained in a letter what had really happened.[3] This letter was attached to the complaint which Mr. Gougnin's lawyer lodged with the Supreme Court with an application for judicial review under the *nadzor* (judicial supervision) procedure.

2.8 According to the author, under questioning by the investigators, Pokrepkin said that Gougnin, Ismailov and Karimov had told him that they had beaten Chakirov, but that they had not found any money at his home. According to the author, at the appeal stage, Karimov said that Pokrepkin had paid the investigator US$ 1,000.

2.9 In the author's view, the investigators did not perform a reconstitution of the crime, and hence had been unable to check properly the role played by each of those present at the scene of the crime.

2.10 Article 23 of Uzbekistan's Code of Criminal Procedure does not require accused persons to prove their innocence, and they must be given the benefit of any doubt. However, according to the author, her son's conviction was based on indirect evidence collected by the investigators that could not be confirmed in court, or on forced confessions obtained from her son and his co-accused, whereas other evidence that could have demonstrated their innocence was simply lost during the investigation. In particular, the author emphasizes that since her son had allegedly inflicted several knife wounds on his victims, traces of blood should have been present on his hair, hands and clothes. Yet no examination of his hair or hands, or of substances under his nails, which would have been vital in order to establish his guilt, was ever carried out.

2.11 According to the author, the facts as described above show that the courts considered this case in a purely formal manner. The sentence imposed on her son does not correspond to his personality. In particular, the file contained several positive character assessments supplied by his neighbours. According to the author, the court, in the absence of evidence and ignoring doubts which should have benefited the accused, handed down an "unlawful" decision. The court

[3] A copy of the letter is attached to the file. In fact, the author explains in the letter that Pokrepkin was the actual murderer, but that Pokrepkin had threatened him and told him to claim that he (Gougnin) had committed the murder. The author's son explains that he had lied during the preliminary investigation and in court for fear that Pokrepkin would carry out his threats. Nevertheless, the letter makes no reference to acts of torture or ill-treatment.

thus neglected its obligation to be impartial and objective, and took the side of the victims of the murder, by openly supporting the arguments of the prosecution.

2.12 The author points out that her son's conviction ran counter to the Supreme Court's ordinance of 2 May 1997 relating to court rulings, under which decisions imposing the death penalty must be substantiated in all cases, taking into account all the circumstances of the crime, its causes and motivations, and also information which describes not only the guilty party, but also the victim. The author cites a further Supreme Court ruling of 20 December 1996 in which, she says, the Court drew the attention of the courts to the fact that the death penalty is an exceptional punishment, and that the law does not make it obligatory to impose such a punishment.

2.13 On 24 November 2003, the author reported that she had received a negative response from the Supreme Court to her request for a pardon for her son. The Court is said to have informed her that the request for a pardon had been passed to it by the office of the President, and that, after studying the file, the Court had found no grounds for modifying the verdict.

The complaint

3. The author claims that the facts as presented reveal a violation by Uzbekistan of the rights of Mr. Gougnin and Mr. Karimov under article 6, paragraphs 1, 4 and 6; article 7; article 9; article 10; article 14, paragraphs 1 to 3; and article 16 of the Covenant.

State party's observations

4.1 By note verbale of 11 December 2003, the State party pointed out that on 18 February 2003, the Supreme Court commuted the death penalty imposed on Mr. Karimov and substituted a prison term of 20 years. It also indicated that the Supreme Court had taken all necessary steps to suspend the application of the death penalty imposed on Mr. Gougnin, in response to the Committee's request.

4.2 On 25 May 2004, the State party submitted additional information on the case of Mr. Gougnin. First of all, it noted that on 26 March 2004, the Supreme Court had commuted the death penalty imposed on him and substituted a prison term of 20 years.

4.3 The State party recapitulates the facts of the case: on 28 October 2002 Mr. Gougnin, who had already been sentenced to three years' punitive deduction of earnings for theft earlier in the year, was found guilty by Tashkent city court of attempted theft and murder, and sentenced to death. On 10 December 2002, the death sentence was upheld on appeal. The Supreme Court considered his case on 18 February 2003, and upheld the sentence.

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 communication is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained, as required by article 5, paragraph 2 (a) and (b), of the Optional Protocol, that the same matter was not being examined under any other international procedure of investigation or settlement, and notes that it is uncontested that domestic remedies have been exhausted.

5.3 The Committee notes that the author claims, without supplying further details, that her son and Mr. Karimov were deprived of their rights under articles 9 and 16 of the Covenant. In the absence of any other pertinent information in this respect, it considers that this part of the communication is inadmissible as insufficiently substantiated for purposes of admissibility under article 2 of the Optional Protocol.

5.4 The Committee notes that the author's allegations concerning the manner in which the courts handled the case of Mr. Gougnin and Mr. Karimov and qualified their acts may raise issues under article 14, paragraphs 1 and 2, of the Covenant. It observes, however, that these allegations relate primarily to the evaluation of facts and evidence by the State party's courts. It recalls that it is generally for the courts of States parties to evaluate facts and evidence in a particular case, unless it can be demonstrated that the evaluation was clearly arbitrary or amounted to a denial of justice.[4] In this case, the Committee considers that given the absence in the case file of any court records, trial transcript, or other similar information which would have made it possible to verify whether the trial in fact suffered from such defects, this part of the communication is inadmissible under article 2 of the Optional Protocol as insufficiently substantiated.

5.5 The Committee notes that the author's allegations concerning the forced confessions obtained from Mr. Gougnin and Mr. Karimov raise issues under articles 7, 10 and 14, paragraph 3 (g), of the Covenant. It also notes that the State party has not submitted observations on this matter. At the same time, it notes that the author's allegations in this connection are very broadly worded. For example, the author does not supply a specific description either of the methods of torture which are claimed to have been suffered by the alleged victims, or of the exact identity of those responsible for acts of torture. No supporting medical certificate in this regard has been submitted. The Committee also notes that these allegations were made for the first time only in the present communication, and that no mention of torture or ill-treatment in respect of the author's son appears in the copies of the appeal lodged in the appeal court or the application lodged with the Supreme Court. The only document containing an allegation of this nature, although it was made in still briefer terms than in the present communication, is the request for a Presidential pardon, signed by the author of the communication at an unknown date. In these circumstances, the Committee considers that the author has not succeeded in substantiating this allegation sufficiently for purposes of admissibility, and finds this part of the communication inadmissible under article 2 of the Optional Protocol.

5.6 Concerning the author's allegations under article 6 of the Covenant, the Committee notes that the death sentences imposed on the alleged victims were both commuted in 2003 and 2004.

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[4] See, for example, communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, para. 6.2.

Consequently, it considers that this complaint no longer applies. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

6. The Human Rights 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. The text will also be translated into Arabic, Chinese and Russian for the purposes of the annual report.]
