



**International covenant
on civil and political
rights**

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

VIEWS

Communication No. 1205/2003

<u>Submitted by:</u>	Mrs. Zinaida Yakupova (not represented by counsel)
<u>Alleged victim:</u>	The author's husband, Mr. Zholmurza Bauetdinov
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	8 October 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 9 October 2003 (not issued in document form)
<u>Date of adoption of Views:</u>	3 April 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of death penalty after unfair trial and on basis of confession obtained under torture in another country.

Substantive issues: Torture, cruel, inhuman or degrading treatment or punishment; right to life; right to seek pardon or commutation; right to be presumed innocent; right not to be compelled to testify against oneself or to confess guilt.

Procedural issue: Lack of substantiation of claim.

Articles of the Covenant: 6; 7; 14, paragraphs 2 and 3(g)

Article of the Optional Protocol: 2

On 4 April 2008, 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. 1205/2003.

[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-second session

concerning

Communication No. 1205/2003*

<u>Submitted by:</u>	Mrs. Zinaida Yakupova (not represented by counsel)
<u>Alleged victim:</u>	The author's husband, Mr. Zholmurza Bauetdinov
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	8 October 2003 (initial submission)

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

Meeting on 3 April 2008,

Having concluded its consideration of communication No. 1205/2003, submitted to the Human Rights Committee on behalf of Zholmurza Bauetdinov 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 Zinaida Yakupova, an Uzbek national born in 1969. She submits the communication on behalf of her husband, Zholmurza Bauetdinov, an Uzbek national born in 1960, who at the time of submission of the communication was detained in investigation ward No. 9 in Nukus, Karakalpakstan region (Uzbekistan), awaiting execution

* 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. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, 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.

following a death sentence imposed on him by the Supreme Court of Karakalpakstan on 15 July 2003. She claims that her husband is a victim of violations by Uzbekistan¹ of his rights under article 6; article 7 and article 14, paragraph 3 (g) of the Covenant. In her comments on the State party's observations, the author added claims related to article 14, paragraph 2, of the Covenant. She is not represented.

1.2 Under rule 92 (old rule 86) of its Rules of procedure, the Committee, acting through its Special Rapporteur for New Communications and Interim Measures, requested the State party, on 9 October 2003, not to carry out the execution of the author's husband, so as to enable the Committee to examine her complaint. By note of 30 October 2003, the State party informed the Committee that it acceded to the request for interim measures. On 28 March 2008, the State party forwarded information that on 29 January 2008, the Supreme Court of Uzbekistan had commuted Mr. Bauetdinov's death sentence to life imprisonment.

Factual background

2.1 During the night of 2 to 3 December 2001, six members of the Sarmanov family, including the head of the family, Iskander Sarmanov, were murdered in their home in Almaty, Kazakhstan. Their savings were stolen and Sarmanov's 13 year old daughter was raped in front of her 10 year old sister, before being killed. Sarmanov's younger daughter survived the attack but sustained serious bodily injuries.

2.2 On 6 June 2002, the author's husband, a classmate of Sarmanov who stayed with the Sarmanov family in Almaty in November – December 2001, was arrested at the house of another friend in Nukus (Uzbekistan), by officers of the Criminal Investigation Department, on suspicion of murdering the Sarmanov family. Mr. Bauetdinov was kept in Uzbek custody before being involuntary transferred, on an unspecified date, to Kazakhstan,² where a pre-trial investigation on his case was conducted for two months. In its course, he was forced to testify against himself by investigators of the Kazakh Main Police Department. During the time he spent in Kazakhstan, he was subjected to physical violence, which included being hung upside-down for up to six hours, being awoken at night by 3-4 masked individuals and being beaten up by them until losing consciousness. Each time he lost consciousness, he was administered an injection by a doctor to awaken him. He was deprived of food and water. Unable to withstand the torture, Mr. Bauetdinov admitted to have murdered the Sarmanov family. In December 2002, he was returned to Nukus (Uzbekistan). On an unspecified date, he was charged in Uzbekistan with attempted premeditated murder under aggravating circumstances (article 25 and article 97, part 2, of the Criminal Code), premeditated murder under aggravating circumstances (article 97, part 2), robbery committed with infliction of serious bodily harm (article 164, part 3) and rape of a minor

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

² In fact, it appears that Mr. Bauetdinov had committed a rape in Uzbekistan in November 2001, before escaping to Kazakhstan. At the time of his transfer to Kazakhstan, he was imprisoned in Uzbekistan, for the crime of the rape in question. He was transferred to Kazakhstan, pursuant to the provisions of the Commonwealth of Independent States' Legal Aid Convention (Minsk Convention 1993) in order to be investigated there for the crimes he committed in Kazakhstan in December 2001. After the completion of the investigation in question, he was brought back to Uzbekistan.

person under the age of 14 (article 118, part 4). He was brought to the Prosecutor's Office, where his criminal case file was translated into the Karakalpak language and transmitted to the court.

2.3 During the proceedings in the first instance court in Uzbekistan, i.e. the Supreme Court of Karakalpakstan, Mr. Bauetdinov complained about having been forced to admit guilt under torture during the pre-trial investigation in Kazakhstan. He requested the court to exclude his self-incriminating testimony as evidence. The author submits that the court disregarded her husband's request, in violation of article 7 and article 14, paragraph 3(g), of the Covenant. On 15 July 2003, the court sentenced him to death for having committed crimes under articles 25; 97, part 2; 164, part 3, and 118, part 4, of the Uzbek Criminal Code. The author claims, without giving further details, that her husband's death penalty sentence was handed down in violation of article 6 of the Covenant.

2.4 From the judgment of 15 July 2003, it transpires that:

a) In court, Mr. Bauetdinov testified that his classmate Sarmanov was a dentist and that he was buying stolen gold from dealers, from which he produced dental prostheses. Sarmanov owed money to these dealers, who, during the night of 3 September 2001, came to claim the debt and inflicted bodily harm on members of the Sarmanov family. At the end of November 2001, Mr. Bauetdinov tried to settle the issue with the dealers peacefully, on behalf of Sarmanov; but he was told not to interfere. A week later, he and Sarmanov run into one of the dealers in the market. Sarmanov and the dealer started to argue and were shortly joined by the other dealers. At some point, Mr. Bauetdinov was hit on his head by pliers and knocked down. When he got up, he was stabbed twice in his thighs. Having witnessed this, Sarmanov promised to pay his debts.

b) On 1 December 2001, Sarmanov asked Mr. Bauetdinov for help in moving to a new house. On the night of 2 December 2001, someone knocked at the door. Mr. Bauetdinov opened the door and saw one of the dealers, who insisted on speaking to Sarmanov. Sarmanov was upset by the intrusion. Mr. Bauetdinov tried to settle the issue of the debt peacefully, but this did not help. Sarmanov asked the author's husband not to worry and to go to bed. He went to bed but could not fall asleep because of the noise. He dressed up and went for a walk. At some point he entered a nearby house that was under construction and saw from there two other dealers entering the house through a basement window, and all three escaping with a bag forty minutes later.

c) Mr. Bauetdinov then discovered that the members of the Sarmanov family were either dead or fatally wounded. He took his bag and ran away. He did not report the crime to the police because he feared that due to his previous criminal record, he would be suspected of the crime. He travelled to Chimkent (Kazakhstan), where he was told by a friend that he was wanted by the police and that his photos were shown on national television and published in newspapers. On 1 June 2002, he visited a friend in his home town of Nukus (Uzbekistan). This friend reported him to the militia, and Mr. Bauetdinov was apprehended four days later.

d) During the pre-trial investigation, Mr. Bauetdinov confessed guilt in the presence of his lawyer and that of the First Deputy of Almaty City Prosecutor's Office. On 26 September 2002, in the presence of his lawyer and other witnesses, Mr. Bauetdinov explained when, how and where he murdered the victims and showed the exact location on the simulation video. This testimony was documented in a protocol. Volume 1, pages 289-290, of his criminal case file

contains the conclusion of the forensic medical examination No.205-D, which certified that no injuries could be identified on the body of Mr. Bauetdinov. The latter examination was requested by the ruling of the investigator of the Almaty City Department of Internal Affairs.

e) Mr. Bauetdinov gave conflicting testimony, by sometimes arguing that he admitted guilt in response to a promise that he would be returned to Uzbekistan, while at other times claiming that he was forced to confess under torture.

2.5 On an unspecified date, Mr. Bauetdinov's death sentence of 15 July 2003 was appealed to the Judicial College for criminal cases of the Supreme Court of Karakalpakstan with the request, under article 6, paragraph 4, of the Covenant, to commute the death sentence. On 26 August 2003, the appeal was denied on the grounds that the author's husband, who had been previously convicted four times, had committed another particularly serious crime.

The complaint

3. The author claims that the State party violated her husband's rights under article 6; article 7 and article 14, paragraph 3 (g), of the Covenant.

State party's admissibility and merits observations

4.1 On 30 October 2003, the State party states that, on 15 July 2003, the author's husband was found guilty of premeditated murder of six members of the Sarmanov family, the rape of a minor person under the age of 14, the attempted premeditated murder of Sarmanov's younger daughter and of robbery. This sentence was confirmed by the Judicial College for criminal cases of the Supreme Court of Karakalpakstan on 26 August 2003.

4.2 The State party submits that guilt of the author's husband was proven beyond reasonable doubt by the case file materials; his actions were correctly qualified legally. While imposing the punishment, the court took into account public danger and severe consequences of the crime committed by Mr. Bauetdinov.

Author's comments on State party's observations

5.1 On 23 May 2007, the author adds that out of all the provisions of the Criminal Code under which her husband was sentenced, the death penalty is provided for as punishment only under article 92, part 2. The latter provision, however, also contains alternative punishment, in form of 15 to 20 years of imprisonment. On an unspecified date, a motion for a supplementary investigation in the case was filed with the Presidential Administration. This motion was denied by the Supreme Court of Uzbekistan on 13 November 2006.

5.2 The author reiterates her claim that during the pre-trial investigation in Kazakhstan, her husband was subjected to torture. She now submits that despite continuous beatings, he refused to give any testimony and to sign any self-incriminating documents. Reportedly, when the investigators realised that he would not concede, they 'left him alone'. She submits that while in Kazakhstan, her husband's *ex-officio* lawyer was present only during one single interrogation session and, along with the investigator, put pressure on him to confess guilt. At all stages of the court proceedings in Uzbekistan, the author's husband was duly represented by a lawyer.

5.3 The author advances a new claim of violation by the State party of her husband's rights under article 14, paragraph 2, of the Covenant. Firstly, his guilt was established, *inter alia*, on the simple fact that two out of thirteen fingerprints collected at the crime scene matched those of her husband. She submits that the fingerprints in question were found on the sugar bowls and could have been left by him during his stay with the Sarmanov family in November - December 2001. Secondly, according to an expert opinion of 21 November 2002, it could not be established whether sperm found in the vagina of Sarmanov's elder daughter was that of her husband. Reportedly, this latter fact was not interpreted by the court in her husband's favour. Thirdly, his guilt was predicated, *inter alia*, on the testimonies of Sarmanov's minor daughter who survived the attempt on her life. However, she was emotionally unstable and provided conflicting testimony. Fourthly, the court disregarded statements of three other witnesses who testified that the Sarmanov family had previously been attacked by masked people during the night of 3 September 2001. Lastly, the court did not take into account her husband's testimony on what had happened during the night of 2 to 3 December 2001 that he gave at the trial by the first instance court.

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

6.2 The Committee has ascertained, as required under article 5, paragraph 2, of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement and notes that the State party has not contested that domestic remedies have been exhausted in the present communication.

6.3 In relation to the alleged violation of article 7 of the Covenant by the State party, the Committee notes that the author does not claim that her husband was subjected to torture on the territory of Uzbekistan and/or by the Uzbek law enforcement officers. According to her, Mr. Bauetdinov was subjected to torture on the territory of Kazakhstan and by the Kazakh law enforcement officers. The Committee recalls that States parties are under an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant, in the country to which removal is to be effected.³ In this regard, the Committee notes that the author did not advance any claim that, at the time of her husband's involuntary transfer from Uzbekistan, there were substantial grounds for believing that, as a necessary and foreseeable consequence of the transfer to Kazakhstan, there was a real risk that he would be subjected to treatment prohibited by article 7.⁴ In these circumstances, the Committee considers that the claim under article 7 of the Covenant against the State party has

³ General Comment No. 31[80], 29 March 2004, para.12.

⁴ See, *T. v. Australia*, Communication No. 706/1996, Views adopted on 4 November 1997, paras.8.1 and 8.2.; *A.R.J. v. Australia*, Communication No. 692/1996, Views adopted on 28 July 1997, para.6.9.

been insufficiently substantiated, for purposes of admissibility, and finds it inadmissible under article 2 of the Optional Protocol.

6.4 With regard to the claim under article 14, paragraph 2, in that the State party's courts erred in the evaluation of facts and evidence in the case, the Committee recalls that the evaluation of facts and evidence and interpretation of domestic legislation is in principle for the courts of States parties, unless the evaluation and interpretation were clearly arbitrary or amounted to a denial of justice.⁵ The author has not adduced pertinent information or submitted relevant documentation to allow the Committee to assess whether the court proceedings of the author's husband suffered from such defects, and the Committee thus considers that this part of the communication is also inadmissible under article 2 of the Optional Protocol.

6.5 The Committee observes that the author's claim under article 6 of the Covenant is closely linked to the claim under article 14, paragraph 3(g), with regard to the use of evidence obtained under torture in Kazakhstan by the Uzbek courts. It considers them to be sufficiently substantiated, for purposes of admissibility, and, accordingly, declares the remaining claims admissible.

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 under article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the author's claim that the State party's courts disregarded her husband's claims of his having been tortured in Kazakhstan and determined his guilt on the basis of evidence obtained under torture. The Committee observes, however, that according to the judgment of 15 July 2003, a copy of which was provided by the author herself, the Supreme Court of Kazakhstan did examine the conclusion of Kazakh forensic medical examination No.205-D, which certified that no injuries had been identified on the body of the author's husband. The Committee further notes that in her comments of 23 May 2007, the author changed the description of the facts from her initial submission, by stating that despite continuous beatings, her husband refused to give any testimony and to sign any documents. In addition, according to the judgment of the Supreme Court of Karakalpakstan, her husband gave conflicting testimony in court, claiming at some stages of the proceedings that he admitted guilt against a promise to be returned to Uzbekistan, while at other times he stated that he was forced to do so under torture. In this regard, the Committee recalls its jurisprudence that the evaluation of facts and evidence and interpretation of domestic legislation is in principle for the courts of States parties, unless the evaluation and interpretation were clearly arbitrary or amounted to a denial of justice.⁶ The Committee observes that conflicting information has been provided by the author and by the State party as to (1) whether the author's husband was subjected to torture in Kazakhstan, and (2) whether he was sentenced to death by the State party's courts on the basis of self-incriminating testimony. The Committee is unable to conclude, on the basis of the material

⁵ See, *inter alia*, Errol Simms v. Jamaica, Communication No. 541/1993, Inadmissibility decision of 3 April 1995, para.6.3.

⁶ Simms v. Jamaica, *supra* n.5.

made available to it, that the State party did not take the necessary steps to ensure that the right of the author's husband not to be compelled to testify against himself or to confess guilt was respected. It therefore considers that the facts before it do not reveal a violation of article 14, paragraph 3 (g), of the Covenant.

7.3 As to the author's claim under article 6 of the Covenant, the Committee notes that her husband was sentenced to death for having committed a particularly serious crime, that is classified as such under the laws of the State party, by the judgment of the Supreme Court of Karakalpakstan, and that this death sentence was subsequently confirmed by a higher court. The Committee also notes that, on an unspecified date, a motion for a supplementary investigation in the case was filed with the Presidential Administration and that this motion was denied by the Supreme Court of Uzbekistan on 13 November 2006. In this light and absent any finding of violation of article 14 in the present case, the Committee concludes that the facts before it do not reveal a violation of article 6, of the Covenant.

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 do not disclose a violation of any of the provisions of the International Covenant on Civil and Political Rights.

[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.]
