



**International  
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HUMAN RIGHTS COMMITTEE  
Eighty-first session  
5 - 30 July 2004

**VIEWS**

**Communication No. 911/2000**

Submitted by: Abdumalik Nazarov (represented by counsel, Mrs. Irina Mikulina)

Alleged victim: Abdumalik Nazarov

State party: Uzbekistan

Date of communication: 28 October 1999 (initial submission)

Documentation references: Special Rapporteur's rule 91 decision, transmitted to the State party on 27 January 2000 (not issued in document form)

Date of adoption of Views: 6 July 2004

On 6 July 2004 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. 911/2000. The text of the Views is appended to the present document.

[ANNEX]

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\* Made public by decision of the Human Rights Committee.

**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-first session

concerning

**Communication No. 911/2000\*\***

Submitted by: Abdumalik Nazarov (represented by counsel, Mrs. Irina Mikulina)

Alleged victim: Abdumalik Nazarov

State party: Uzbekistan

Date of communication: 28 October 1999 (initial submission)

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

Meeting on 6 July 2004

Having concluded its consideration of communication No. 911/2000 submitted to the Committee on behalf of Abdumalik Nazarov 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,

Adopts the following:

**Views under article 5, paragraph 4, of the Optional Protocol**

1.1 The author is Abdumalik Nazarov, a citizen of Kyrgyzstan, born in 1973, and currently serving a term of nine years' imprisonment in Uzbekistan<sup>1</sup>. He claims to be a victim of violations by Uzbekistan of article 10, paragraph 1, article 14, paragraphs 2, 3(b), (c) and (d), and article 18, paragraph (1), of the International Covenant on Civil and Political Rights. The communication also appears to raise issues under article 9(3) and article 14(3)(e). He is represented by counsel.

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

<sup>1</sup> The Optional Protocol entered into force for Uzbekistan on 28 September 1995.

1.2 The Covenant and the Optional Protocol entered into force in relation to Uzbekistan on 28 December 1995.

**The facts as presented by the author**

2.1 On the morning of 26 December 1997, the author, together with his father Sobitkhon and brother, Umarkhon, were driving from Kyrgyzstan to Uzbekistan to visit the author's mother. The car was stopped after crossing the border into Uzbekistan, in the village of Vodil in Ferghana province by the militia, who checked their documents and, without providing a reason, searched the car. Although nothing suspicious was found, the militiamen seized the keys to the car, and took the Narazovs to the regional office of the Board of Internal Affairs (BIA), where they were detained. The Nazarovs were told only that they were 'under suspicion'. The car was then searched for a second time in the presence of the Nazarovs, this time by officers of the BIA, and again nothing was found.

2.2 At about 6:30pm on 26 December 1997, some ten hours after they were first detained on the border, the Nazarovs were taken to the yard of the BIA offices, and their car was searched again. This time a paper parcel, the contents of which smelled of hemp, was found under a rug in the car. The rug had been in the car during the previous two searches, and earlier there had been a spanner under the rug, which had now disappeared. The paper bag was analyzed the following day, and found to contain 12 grams of hemp. On 28 December 1997, the author was charged with possession of narcotics with intent to sell, an offence under s276 of the Criminal Code of Uzbekistan. He was later charged with the further offence of smuggling contraband, contrary to s246(1) of the Criminal Code. On 30 December 1997, the author's father and brother were released.

2.3 On 27 December 1997, the authorities searched the house of the author's father, and found numerous blank forms with the letterhead of an organization called the 'Committee of Asian Muslims'. These documents were identified as belonging to the author, and he was charged under article 228 of the Criminal Code with forgery of documents.

2.4 The author claims that the drugs discovered in the car did not belong to him, and that they were 'planted' by the authorities to justify his detention. He notes that the authorities had ample opportunity to plant the drugs, as they were in possession of the keys to the car for more than 10 hours. The author argues that, if the drugs had been in the car from the beginning, they would have been found the first time the car was searched, particularly given that the packet smelled so strongly of hemp. The author notes that he is the youngest brother of Sheikh Obidkhon Nazarov, and that he has previously been the subject of adverse treatment from the BIA.

2.5 The author claims that he obtained the documents found in his father's house from an acquaintance, and that he had simply intended to use them to wrap fruit at his stall in the Tashkent city market. Further, he states that the documents are not those of an official body, and cannot therefore be the subject of forgery at law. He notes that Uzbek law criminalizes forgery only of documents which have some official status, and which have some legal bearing on the rights of the person who possesses them. This was not the case in relation to the documents in question.

2.6 On 4 May 1998, the author was convicted by the District Court of Ferghana of the following offences, for which he received the following sentences: smuggling contraband

(s246(1) of the Criminal Code) - 7 years' imprisonment; possession of drugs without intent to sell (s276 of the Criminal Code) - 2 years' imprisonment; and forgery of documents (s228 of the Criminal Code) - 2 years' imprisonment. The author was sentenced to serve a total of 9 years imprisonment with hard labour, together with confiscation of property.

2.7 The author's appeal to the Court of Appeal of Ferghana District was dismissed on 15 June 1998. A further appeal to the Supreme Court of Uzbekistan was dismissed on 9 September 1999.

2.8 The author claims that there were a number of procedural irregularities in relation to his arrest and trial. He claims that there was no probable cause to detain him, his brother and father on the border, and that their arrest therefore contravened article 221 of the Criminal Procedure Code. He alleges that his initial arrest was confirmed by the relevant authority on 31 December 1997, 5 days after his detention, which is well beyond the 72 hour limit imposed by the Criminal Procedure Code. In this regard, according to Decree number 2 of the Plenum of the Supreme Court of the Republic of Uzbekistan, dated 2 May 1997, any evidence obtained in violation of the law cannot be relied on by Courts in arriving at their decisions.

2.9 In addition the Court allegedly did not allow defence counsel to appoint an expert to determine the geographical origin of the hemp. The defence had sought to prove that it had been produced in Uzbekistan, not Kyrgyzstan, and therefore more likely to have been procured by the Uzbek militiamen rather than by the author, who lived in Kyrgyzstan.

### **The complaint**

3. The author claims to be a victim of a violation of article 10, paragraph 1, article 14, paragraphs 2, 3(b), (c) and (d), and article 18, paragraph (1), of the International Covenant on Civil and Political Rights. Furthermore, he claims that his arrest and detention were unlawful, and that his trial was unfair.

### **The state party's observations on admissibility and merits**

4. In spite of reminders addressed to it on 26 February 2001 and 24 July 2001, the State party has made no submission on the admissibility or merits of the case.

### **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 the Rule 87 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 required 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 exhaustion of domestic remedies, the Committee has noted that according to the information submitted by the author, all available domestic remedies have been exhausted. In the absence of any information from the

State party the Committee considers that the requirements of article 5 (b) of the Optional Protocol are met.

5.3 The Committee notes that the author's claims under article 14(3)(b), (c), and (d) are not substantiated by specific details. Thus, there is no explanation as to the adequacy or otherwise of the facilities provided to the author for the purposes of preparing his defence (article 14(3)(b)). It transpires from the complaint that the case was heard by the courts of various instances without delay (article 14(3)(c)). There is no evidence that the author was deprived of his rights under article 14(3)(d). On the contrary, from the documents submitted, it appears that the trial was conducted in the presence of the accused and that he was defended by counsel. Accordingly, the Committee finds that these claims have not been substantiated, and are therefore inadmissible pursuant to article 2 of the Optional Protocol.

5.4 Similarly, there is no information in the author's communication to the Committee to substantiate his claims under articles 10 and 18. In particular, counsel has not provided any information about mistreatment of the author by law enforcement officials during the detention period. Similarly, the author has not sufficiently substantiated that his freedom of thought and religion have been affected, and accordingly, the Committee finds these claims to be inadmissible pursuant to article 2 of the Optional Protocol.

5.5 As far as the remaining author's claims under articles 9, paragraph 3, and 14, the Committee considers that they have been sufficiently substantiated for purposes of admissibility, and decides to examine them on the merits.

### **Consideration of the merits**

6.1 The Human Rights Committee has considered the present 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. It notes with concern that the State party has not provided any information clarifying the matters raised in the communication. It recalls that article 4, paragraph 2, of the Optional Protocol requires that a State party should examine in good faith all the allegations brought against it, and should provide the Committee with all relevant information at its disposal. Given the failure of the State party to cooperate with the Committee on the issues raised, due weight must be given to the author's allegations to the extent they have been substantiated. The Committee notes that the author has made specific and detailed allegations concerning his arrest and trial. The State party has not responded to these allegations.

6.2 In relation to article 9(3), the author notes that his arrest was confirmed by the relevant authority on 31 December 1997, 5 days after his detention, however it does not appear that the confirmation of the arrest involved the author being brought before a judge or other authorized judicial officer. In any event, the Committee does not consider that a period of 5 days could be considered 'prompt' for the purpose of article 9(3).<sup>2</sup> Accordingly, in the absence of an explanation from the State party, the Committee considers that the communication discloses a violation of article 9(3) by the State party.

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<sup>2</sup> See for example Communication no 852/1999, *Borisenko v Hungary*, 14 October 2002, where the Committee considered that a three day period was not 'prompt'.

6.3 The author further alleges that the State party violated article 14, and points to a number of circumstances which he claims, as a matter of evidence, point clearly to the author's innocence. The Committee recalls its jurisprudence and notes that it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence was manifestly arbitrary or amounted to a denial of justice. However in the current case the author claims that the State party violated article 14 of the Covenant, in that the Court denied the author's request for the appointment of an expert to determine the geographical origin of the hemp, which may have constituted crucial evidence for the trial. In this respect, the Committee has noted that in the court decision submitted before it, the court when denying this request gave no justification. In the absence of any explanation from the State party, the Committee considers that this denial did not respect the requirement of equality between the prosecution and defence in producing evidence, and amounted to a denial of justice. The Committee therefore decides that the facts before it reveal a violation of article 14 of the Covenant.

7. 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 violations of articles 9(3) and 14 of the Covenant.

8. Pursuant to article 2, paragraph 3(a) of the Covenant, the Committee considers that the author is entitled to an appropriate remedy, including compensation and his immediate release.<sup>3</sup>

9. By becoming a State 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, that the State party has undertaken to ensure 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 cases where 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 in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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<sup>3</sup> See for example *Gridin v Russian Federation*, Communication no 770/1997, views adopted 20.07.2000.