



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/83/D/973/2001
13 April 2005

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-third session
14 March – 1 April 2005

VIEWS

Communication No. 973/2001

| | |
|---------------------------------------|---|
| <u>Submitted by:</u> | Mrs. Maryam Khalilova (not represented by counsel) |
| <u>Alleged victim:</u> | Mr. Validzhon Alievich Khalilov (author's son) |
| <u>State party:</u> | Tajikistan |
| <u>Date of initial communication:</u> | 14 May 2001 (initial submission) |
| <u>Document references:</u> | Special Rapporteur's rule 92/97 (old rule 86/91) decision, transmitted to the State party on 16 May 2001. (not issued in document form) |
| <u>Date of adoption of Views:</u> | 30 March 2005 |

Subject matter: Death sentence after unfair proceedings.

Procedural issues: Failure of State party to provide information.

Substantive issues: Imposition of death sentence after unfair trial and ill-treatment during preliminary investigation.

Articles of the Covenant: 6, 7, 10, 14

Articles of the Protocol: 2, 5 (4)

On 30 March 2005, 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. 973/2001. The text of the Views is appended to the present document.

[ANNEX]

* 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-third session

Concerning

Communication No. 973/2001**

| | |
|---------------------------------------|--|
| <u>Submitted by:</u> | Mrs. Maryam Khalilova (not represented by counsel) |
| <u>Alleged victim:</u> | Mr. Validzhon Alievich Khalilov (author's son) |
| <u>State party:</u> | Tajikistan |
| <u>Date of initial communication:</u> | 14 May 2001 (initial submission) |

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

Meeting on 30 March 2005,

Having concluded its consideration of communication No. 973/2001, submitted to the Human Rights Committee on behalf of Mr. Validzhon Alievich Khalilov 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 of the communication is Mrs. Maryam Khalilova, a Tajik citizen born in 1954. She submits the communication on behalf of her son – Validzhon Alievich Khalilov, also a Tajik national, born in 1973, who at the time of submission of the communication was kept on death row in Detention Centre SIZO No 1 in Dushanbe and awaiting execution, following a death sentence handed down by the Supreme Court of Tajikistan on 8 November 2000. She claims that her son is a victim of violations by Tajikistan of articles 6, paragraphs 1 and 4; 10, paragraph 1; and 14, paragraphs 2, 3 (g), and 5, of the International Covenant on Civil and Political Rights. The communication also appears to raise issues under article 7 of

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

the Covenant, with regard to the author and her son, although this provision was not directly invoked by the author. The author is not represented by counsel.

1.2 On 16 May 2001, in accordance with rule 92 (old rule 86) of its rules of procedure, the Human Rights Committee, acting through its Special Rapporteur for New Communications, requested the State party not to carry out the death sentence against Mr. Khalilov while his case was pending before the Committee. This request for interim measures for protection was reiterated on 17 December 2002 and on 15 April 2004. No reply has been received from the State party. By letter of 18 February 2005, the author informed the Committee that on 10 February 2005, she received an attestation signed by a Deputy Chairman of the Supreme Court, in accordance to which her son's execution had been carried out on 2 July 2001.

Factual background

2.1 In 1997, one Saidmukhtor Yorov formed an armed gang in the Gulliston district, Lenin region, Tajikistan. By force and through the use of threats, he recruited young people into his gang and forced them to commit several serious crimes. The author explains that her son was threatened at gun point and forced to join Yorov's gang. When her son realised the so-called "anti- constitutional" nature of the gang's activities, he escaped and hid in the house of an aunt in the Lokhur district, to avoid persecution by this gang.

2.2 In April 1997, Mr. Khalilov visited his home town (Khosilot kolkhoz) in the Gulliston district, to attend the wedding of his sister. After the ceremony, Mr. Khalilov and his father went to pray in the town mosque. According to the author, her son was recognized there by members of Yorov's gang who immediately apprehended him and brought him before Yorov. Mr. Khalilov was forced to join the ranks of the group again.

2.3 In late September 1997, government troops dropped leaflets from helicopters, containing a Presidential appeal to all persons who "by force and lies" had joined Yorov's gang. The President explained that in case of peaceful surrender, members of the gang would be pardoned. Mr. Khalilov escaped again; the gang thereupon threatened his parents with murder. Members of the gang located him at his aunt's house and brought him to Yorov, who threatened that all members of his family would be killed if he escaped once again.

2.4 In December 1997, however, Mr. Khalilov did escape again and hid in another aunt's house, in the Hissar region. Shortly afterwards, he learned that the gang had been disbanded, that Yorov was prosecuted, and that the charges against him were withdrawn. He left the Hissar region in June 1998 to return to Lokhur district. There, the authorities arrested him in January 2000.

2.5 According to the author, her son was beaten by investigators to make him confess participation in different unresolved crimes, including murder, use of violence, robberies and theft, and different other crimes that occurred between 1998 and 2000. According to her, the investigators refused to interrogate neighbours of the aunts in whose houses her son hid between December 1997 and January 2000, and who could have testified that he was innocent.

2.6 On an unspecified date, Mr. Khalilov was transferred from the Lenin District Police Department to Kaferingansky District Police Department. In the meantime, his father was taken from his workplace and brought to his son in the Kaferingansky District Police

Department. The father noted that his son had been beaten and stated that he would complain to the competent authorities. The investigators began to beat him in front of his son. The author's son was threatened and told that he had to confess his guilt of two murders during a TV broadcast or otherwise his father would be killed. Mr. Khalilov confessed guilt in the two murders as requested. Notwithstanding, the investigators killed his father¹.

2.7 On 12 February Mr. Khalilov was shown again on national television (broadcast "Iztirob"). According to the author, he had been beaten and his nose was broken, but the cameras showed his face only from one particular angle that did not reveal these injuries.

2.8 Mr. Khalilov's case was examined by the Supreme Court jointly with the cases of other five co-accused². The author's son was found guilty of the crimes under articles 104 (2) (homicide), 181 (3) (hostage taking), 186 (3) (banditism), 195 (3) (illegal buying, selling, keeping, transporting of weapons, ammunitions, explosives, etc.), 244 (theft), and 249 (robbery with use of violence), of the Criminal Code of Tajikistan. He was sentenced to death on 8 November 2000. According to the author, no victim or injured party recognized her son in court as a participant in the criminal acts, notwithstanding the fact that the witnesses had declared that they could recognize by face every participant in the crimes. The Court allegedly ignored their statements and refused to take them into account or to include them in its decision.

2.9 The author's son filed a request for presidential pardon, but his request was denied on 23 May 2001.

2.10 In a letter dated 5 June 2003, the author reiterates that her son was forced to join the gang of Yorov but did not commit any crimes. He escaped the gang and after the liquidation of the gang, when no risk of persecution by the gang remained, he 'returned to normal life'. When the crimes were committed, he was at his aunts' houses. After his arrest in 2000, he was charged for crimes that were committed by the gang and was subsequently sentenced to death. It is stated that the judgment was upheld by the cassation instance" (date and instance not provided).

2.11 The author also explains that she does not know where her son is held. The officials of the SIZO No1 Detention Centre in Dushanbe allegedly had refused to accept her parcels, telling that her son was removed, without explaining further.

2.12 On 18 February 2005, the author informed the Committee that she received a letter from the Deputy Chairman of the Supreme Court, dated 2 February 2005, where it was stated that her son was executed in 2 July 2001.

¹ The author submits a letter of her son (dated 27 December 2000), addressed to the Committee, in which M. Khalilov contends that his father was brought to the police department and was beaten, humiliated, and burned with an iron by the investigators, until he died. According to Mr. Khalilov, his father was returned home dead and was buried on 9 February 2000. Mr. Khalilov gives the names of two officials who participated in his and his father's beatings: one N., chief of a Criminal Inquiry Department, and his deputy, U. According to him, there were also 3-4 other persons.

² The exact dates of the proceedings are not provided.

The complaint

3.1 The author claims that her son's rights under article 10, paragraph 1, were violated, as he was severely beaten by investigators. Although the author does not invoke it specifically, this part of the communication may also raise issues under article 7 of the Covenant in Mr. Khalilov's respect.

3.2 Although the author does not specifically invoke this provision, her claim that in order to put her son under more pressure, the investigators had brought her husband to the detention centre where he was beaten to death in front of his son, appears to also raise issues under article 7 of the Covenant, in her son's respect.

3.3 The author claims that the facts as presented amount to a violation of her son's right to be presumed innocent under article 14, paragraph 2. She recalls that her son was shown on national television during the investigation – i.e. before any determination of his guilt by a court - and was forced publicly to confess his guilt for several serious crimes.

3.4 The author further claims that her son was a victim of violation of article 14, paragraph 3 (g), of the Covenant, as investigators forced him to confess his guilt.

3.5 Without further substantiating this claim, the author contends that Mr. Khalilov's right under article 14, paragraph 5, to have his sentence reviewed by a higher judicial instance in accordance with the law, was also violated.

3.6 The author contends that her son's rights under article 6, paragraphs 1 and 4, in conjunction with article 14, were violated because her son was sentenced to death, after an unfair trial that did not meet the requirements of due process.

3.7 Finally and notwithstanding the fact that the author does not raise the issue specifically, the communication also appears to raise issues under article 7, in her own respect, because of the alleged constant refusal of Tajik authorities to reveal to the author the current situation and whereabouts of her son.

State party's failure to respect the Committee's request for interim measures under rule 92

4.1 The Committee notes that the State party had executed the author's son despite the fact that a communication had been registered before the Human Rights Committee under the Optional Protocol and a request for interim measures of protection had been addressed to the State party in this respect. The Committee recalls³ that by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and article 1). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual (article 5 (1), (4)). It is incompatible with these obligations

³ See *Piandong v. the Philippines*, Communication No. 869/1999, Views adopted on 19 October 2000.

for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.

4.2 Apart from any violation of the Covenant found against a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In the present communication, the author alleges that her son was denied rights under Articles 6, 10 and 14 of the Covenant. She further makes claims that could be subsumed under article 7, even though this article is not specifically invoked. Having been notified of the communication, the State party has breached its obligations under the Protocol, by executing the alleged victim before the Committee concluded its consideration and examination and the formulation and communication of its Views. It is particularly inexcusable for the State to having done so after the Committee has acted under rule 92 (old 86) of its Rules of Procedure, requesting that the State party refrains from doing so.

4.3 The Committee also expresses great concern about the lack of State party's explanation for its action, in spite of several requests made in this relation by the Committee.

4.4 The Committee recalls⁴ that interim measures pursuant to rule 92 (old 86) of the Committee's rules of procedure adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Protocol. Flouting of the Rule, especially by irreversible measures such as, as in the present case, the execution of the author's son undermines the protection of Covenant rights through the Optional Protocol.

Absence of State party submissions

5. By Notes Verbales of 16 May 2001, 17 December 2002, and 15 April 2004, the State party was requested to submit to the Committee information on the admissibility and merits of the communication. The Committee notes that this information has still not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the author's claims. It recalls that it is implicit in the Optional Protocol that States parties make available to the Committee all information at their disposal.⁵ In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that these have been properly substantiated.

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 communication is admissible under the Optional Protocol to the Covenant.

⁴ See *Saidova v. Tajikistan*, Communication No 964/2001, Views adopted on 8 July 2004.

⁵ See, inter alia, *Khomidova v. Tajikistan*, Communication No 1117/2002, Views adopted on 29 July 2004.

6.2 The Committee notes that the same matter is not being examined under any other international procedure of investigation and settlement, and that available domestic remedies have been exhausted on the basis of the evidence made available to it. In the absence of any State party objection, it considers that the conditions set forth in paragraphs 2 (a) and (b) of article 5 of the Optional Protocol are satisfied.

6.3 The Committee has noted the author's claim that her son's rights under article 6, paragraph 4, of the Covenant, were violated. From her submission, however, it transpires that Mr. Khalilov had submitted a request for Presidential pardon on an unspecified date, and that his request was denied, by Presidential decree, on 23 May 2001. In the circumstances, the Committee finds that the author had failed sufficiently to substantiate this claim for purposes of admissibility, and decides accordingly that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.4 The Committee considers that the remaining author's claims have been sufficiently substantiated for purposes of admissibility, in that they appear to raise issues under articles 6, 7, 10, and 14, of the Covenant.

Examination of the merits

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

7.2 The Committee has taken note of the author's allegations that her son, while in detention, was ill-treated and beaten by the investigators to force him to confess guilt and that in order to put additional pressure on him, his father was beaten and tortured in front of him and as a consequence died in the police premises. The author furthermore identified by name some of the individuals alleged to have been responsible for the beatings of her son and for burning her husband's hands with an iron. In the absence of any State party information, due weight must be given to the author's allegations, to the effect that they have been sufficiently substantiated. The Committee considers that the facts before it justify the conclusion that the author's son was subjected to torture and to cruel and inhuman treatment, in violation of articles 7 and 10, paragraph 1, of the Covenant.

7.3 As above mentioned acts were inflicted by the investigators on Mr. Khalilov to make him to confess guilt in several crimes, the Committee furthermore considers that the facts before it also disclose a violation of article 14, paragraph 3 (g), of the Covenant.

7.4 The Committee has noted the author's claim, under article 14, paragraph 2, that her son's right to be presumed innocent was violated by investigators. She contends that her son was forced to admit guilt on at least two occasions during the investigation on national television. In the absence of any information from the State party, due weight must be given to these allegations. The Committee recalls its General Comment No. 13 and its jurisprudence⁶ that it is "a duty for all public authorities to refrain from prejudging the outcome of a trial". In the present case, it concludes that the investigating authorities failed to comply with their obligations under article 14, paragraph 2.

⁶ See, for example *Gridin v. Russian Federation*, Communication No 770/1997, Views adopted on 20 July 2000.

7.5 The author claimed that her son's right to have his death sentence reviewed by a higher tribunal according to law was violated. From the documents before the Committee, it transpires that on 8 November 2000, the author's son was sentenced to death at first instance by the Supreme Court. The judgment mentions that it is final and not subject to any further cassation appeal. The Committee recalls that even if a system of appeal may not be automatic, the right to appeal under article 14, paragraph 5, imposes on the State party a duty substantially to review, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case⁷. In the absence of any pertinent explanation from the State party, the Committee considers that the absence of a possibility to appeal to a higher judicial instance judgments of the Supreme Court handed down at first instance, falls short of the requirements of article 14, paragraph 5, and, consequently, that there has been a violation of this provision⁸.

7.6 With regard to the author's claim under article 6, paragraph 1, of the Covenant, the Committee recalls that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes a violation of article 6 of the Covenant⁹. In the current case, the sentence of death of the author's son was passed, and subsequently carried out, in violation of the right to a fair trial as set out in article 14 of the Covenant, and therefore also in violation of article 6 of the Covenant.

7.7 The Committee has noted the author's claim that the Tajik authorities, including the Supreme Court, have consistently ignored her requests for information and systematically refused to reveal any detail about her son's situation or whereabouts. The Committee understands the continued anguish and mental stress caused to the author, as the mother of a condemned prisoner, by the persisting uncertainty of the circumstances that led to his execution, as well as the location of his gravesite. The secrecy surrounding the date of execution, and the place of burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities' initial failure to notify the author of the execution of her son amounts to inhuman treatment of the author, in violation of article 7 of the Covenant¹⁰.

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 Mr. Khalilov's rights under articles 6, paragraph 1; 7; 10,

⁷ See *Domukovsky and al. v. Georgia*, Communications No. 623-627/1995, Views adopted on 6 April 1998, and *Saidova v. Tajikistan*, Communication No. 964/2001, Views adopted on 8 July 2004.

⁸ See for example *Aliiev v Ukraine*, Communication 781/1997, Views adopted on 7 August 2003, *Robinson v. Jamaica*, Communication No. 223/1987, Views adopted on 30 March 1989, *Brown v. Jamaica*, Communication No. 775/1997, Views adopted on 23 March 1999.

⁹ See *Conroy Levy v. Jamaica*, Communication No. 719/1996, Views adopted on 3 November 1998, *Clarence Marshall v. Jamaica*, Communication No. 730/1996, Views adopted on 3 November 1998, *Kurbanov v. Tajikistan*, Communication No. 1096/2002, Views adopted on 6 November 2003, and *Saidova v. Tajikistan*, Communication No. 964/2001, Views adopted on 8 July 2004.

¹⁰ See Communications Nos. 886/1999, *Bondarenko v. Belarus*, and 887/1999, *Lyashkevich v. Belarus*, Views adopted on April 2003.

paragraph 1; and 14, paragraphs 2, 3 (g) and 5, of the Covenant, and a violation of article 7 in the author's own respect.

9. Under article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including information on the location where her son is buried, and compensation for the anguish suffered. 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 these 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.]
