



International Covenant on Civil and Political Rights

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Human Rights Committee
Ninety-eighth session
8 to 26 March 2010

Decision

Communication No. 1079/2002

<u>Submitted by:</u>	A. et al. (not represented by counsel)
<u>Alleged victim:</u>	The author, her father, B., her brother, C., and her uncle, D.
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	29 April 2002 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 16 May 2002 (not issued in document form)
<u>Date of adoption of decision:</u>	19 March 2010

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Enforced disappearance; unfair trial, discrimination on political grounds.
<i>Procedural issues:</i>	Level of substantiation of claim.
<i>Substantive issue:</i>	Persecution of a high level official and his family for political reasons.
<i>Article of the Optional Protocol:</i>	2.
<i>Article of the Covenant:</i>	2; 7; 9; 10; 11; 14;19; 26.

[Annex]

ANNEX

Decision of the Human Rights Committee under the Optional protocol to the International Covenant on Civil and Political Rights (ninety-eighth session)

concerning

Communication No. 1079/2002**

Submitted by: A. et al. (not represented by counsel)

Alleged victim: The author, her father, B., her brother, C., and her uncle, D.

State party: Uzbekistan

Date of communication: 29 April 2002 (initial submission)

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

Meeting on 19 March 2010,

Adopts the following:

Decision on admissibility

1. The author of the communication is A., an Uzbek national born in 1968. She submits the communication on her behalf and on behalf of B. (her father), an Uzbek national born in 1948; her brother, C., an Uzbek national born in 1977; and her uncle, D., also an Uzbek national born in 1961¹. The author claims that they are all victims of violations by Uzbekistan, of their rights under article 2; article 7; article 9; article 10; article 11; article 19; and article 26, of the Covenant. Her allegations also raise issues under article 14 of the Covenant, although the author does not invoke this provision of the Covenant specifically in her initial submission. The author is unrepresented. The Optional Protocol entered into force for the State party on 28 December 1995.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

¹ At the time of registration of the communication, the author has submitted written authorisations to act on behalf of her brother and her uncle, but not on behalf of her father, who had allegedly disappeared at this moment. Subsequently, given that the author's father had reappeared, the author submitted also a written authorisation to act on her father's behalf. The author has not presented details on the exact circumstances of the reappearance of her father.

The facts as presented by the author

2.1 B., the author's father, was the Chair of a State-owned stock company "Uzbekhlebprodukt" from April 1997 to April 2000. The company was made up of some 400 firms dealing with storage and processing of cereals, flour, and bread production, and it employed some forty four thousand individuals. According to the author, her father was a skilled manager, which was not appreciated by some. He started receiving threats, blackmail attempts, and offers of bribes in exchange for services. At some point in 2000, her father was asked to pay half a million of US dollars in order to retain his position. Soon afterwards, the author was contacted by an individual who presented himself as a relative of the then Vice-Prime Minister, who warned her that her father would have to pay one million of US dollars in order to avoid problems.

2.2 The author affirms that her father had told her that his deputies had signed several documents in his absence what had resulted in the release and disappearance of several thousands of tons of flour from the State reserve, creating serious problems². Her father's efforts to bring the situation to the attention of the President were in vain. According to the author, she discovered sometime later that the Vice-Prime Minister had provided the President with false information in this respect.

2.3 An official inquiry into the release and disappearance of several hundreds of tons of flour from the State reserve was opened in March 2000. Officials of the firm "Uzbekhlebprodukt" were investigated, and were accused of misappropriation of State property, abuse of power, and other crimes. As a result, twenty two criminal cases were opened, involving more than three hundred persons. In this context, on 27 March 2000, the author's uncle, D. was arrested and charged for the alleged unlawful privatization of the firm "Uch Kakhramon non". The same day the authorities arrested the deputy-chairman of "Uzbekhlebprodukt" in charge of the economic matters, charging him with unlawful distribution of flour and irregular distribution of loans with special conditions.

2.4 In the morning of 31 March 2000, the author's father travelled to the city of Dzhizak, to attend the meeting of the Committee of Ministers. Later that day, the author was informed that her father had been arrested; subsequently, the police explained that in fact her father's whereabouts were unknown and that an arrest warrant against him was issued. The same day, at her mother's insistence, the author left Uzbekistan. All subsequent requests in respect to B.'s whereabouts made by the family to different institutions have remained unanswered³.

2.5 On 5 April 2000, the President issued an order for the dismissal of B. as Chairman of "Uzbekhlebprodukt". The author affirms that shortly thereafter, the authorities started publicly naming her father as a dangerous criminal who had escaped in order to avoid responsibility. The author claims that her mother and other relatives were interrogated and constantly pressured by the authorities.

2.6 The author contends that prior to her departure from Uzbekistan, she was responsible for the international relations of a private company called "NZI". The director of the company was questioned by the police and allegedly beaten in an attempt to force her to provide the author's whereabouts and information on the functioning of the firm. The company's belongings and stamps were seized. Allegedly, the investigators were trying to

² According to the author, the whole system of recording of the wheat available in State depot in Uzbekistan was inaccurate, and her father was one of the first officials who started drawing the authorities' attention to this.

³ The author claims that such requests were addressed to the President, the Prosecutor General's Office, the Ministry of Interior, etc.

establish the author's responsibility for the misappropriation of a large sum of money. An arrest warrant against the author was issued on these grounds.

2.7 The author affirms that the investigators had also "fabricated" charges against her father and her brother. The charges against her father included breach of the rules of distribution of flour from the State reserve, theft of State property, abuse of power, etc. She explains that she and her brother have fled Uzbekistan, as they do not trust the authorities.

2.8 On 7 March 2001, the Tashkent City Court sentenced the author's uncle to a nine years' prison term. According to her, his sentence was groundless and his guilt was not proven. His conviction was partly based on witnesses' statements unlawfully obtained, including under duress. According to the author, all claims formulated during the trial were rejected by the court without sufficient argumentation or were simply ignored. No economic experts' examinations have been carried out, according to the author. In addition, her uncle received a copy of the sentence only forty days after its pronouncement and not within ten days required by law. For this reason, according to the author, her uncle was unable to file an appeal on time⁴.

2.9 The author claims that her father was investigated in twenty two criminal cases, together with some other three hundred individuals, all accused of having organised serious theft and other crimes. Neither the investigators, nor the courts have ordered the conduct of any economic expert examination that might justify or explain the missing wheat, as well as the accuracy of distribution system of cereals from the State reserve. According to the author, her father and his family were all victims of an organised campaign, initiated by high-level officials in order to avoid the engagement of their own responsibility in the mismanagement that had occurred in the bread sector in Uzbekistan. The criminal proceedings against the family were arbitrary and are based, according to the author, on unsubstantiated evidence.

The complaint

3. The author claims that the facts as presented amount to a violation of her, her father's, her brother's and her uncle's rights under article 2; article 7; article 9; article 10; article 11; article 19; and article 26, of the Covenant. Her allegations on the bias of the authorities in respect of the criminal investigations against her family, and the trial of her uncle also raise issues under article 14, although the author does not invoke this provision specifically in her initial complaint.

State party's observations on admissibility and merits

4.1 The State party presented its observations by Note verbale of 31 July 2007. It explains that B., then Chairman of the Board of Directors of "Uzdonmahsulot" State Joint-Stock company, had established a criminal society with his son, and other individuals. Using fake signatures of the staff of the "Uch Qahramon" subsidiary company, D. privatised the company, causing a harm to the State equal to 34 235 459 soums⁵, as assessed by the Committee on the Management of State property. As a result, D. and C. officially became the new owners of the company that was called "Uch Qahramon ltd".

⁴ The author further claims, however, that at that moment, her uncle's cassation claim to the Supreme Court had not yet been examined, and expresses concerns that the cassation claim would most probably only be examined formalistically, as was the case with the appeal examination of the Criminal College of the Tashkent City Court.

⁵ Equal at that time to around 145 000 US dollars
(see <http://data.un.org/CountryProfile.aspx?crName=Uzbekistan>).

4.2 Subsequently, according to the State party, A. also, acting in a prior criminal agreement with his deputy, authorised the delivery of important quantities of flour to “Uch Qahramon ltd”, without having grounds for this and to the detriment of other bread producers in Uzbekistan.

4.3 The author of the communication, working in the “NZI ltd.” company had, according to the State party, under her father’s auspices and pressure, concluded a number of contracts with companies of the State holding “Uzdonmahsulot” for the delivery of polypropylene bags on advanced payment, what resulted in serious damages (150 780 300 Uzbek soums).

4.4 The State party further contends that in 1997, the author’s father had established a joint-venture company “Yangi zamon” under the name of a friend. From 1997 to 2000, B. engaged in criminal agreement with close friends and transferred the property of ten companies (valued 13 499 300 US dollars) from “Uzdonmahsulot” State company to the joint-venture. Thus, he had committed fraud and had unlawfully acquired State property.

4.5 During 1998-2000, A. had also transferred the income from the sales of the products of ten bakeries belonging to “Yangi zamon” joint-venture, the funds were transferred to different bank accounts and were used to acquire raw materials which were later sold and the money was misappropriated using false documents.

4.6 The State party contends that the criminal activities of B. and the group under his leadership, caused damages (to the public interest) for a total of 732 712 710 soums and 13 499 300 US dollars. On this basis, on 7 April 2000, and due to their absence, B., his daughter and his son were charged in absentia⁶, and arrest warrants were issued against them. In 2001, due to the absence of information on their whereabouts, the investigation of the criminal case in connection to them was suspended, in accordance with article 364 of the Criminal Procedure Code (suspension of preliminary investigation).

4.7 D. was sued for misappropriation of State property in particularly large amount, which he had committed together with his brother, B. and the criminal group headed by the latter. In accordance with the decision of the Tashkent City Court of 7 March 2001, D. was sentenced to a nine years prison term. Pursuant to paragraph «a» of article 9 of the Act of Amnesty of 28 August 2000, his penalty was reduced to 6 years.

4.8 The court had established that D. was the Director of the company “Uch Qahramon non” from 1995 to 1999. From October 1999, he entered into a criminal arrangement with his brother, B. and a Deputy Chairman of the same company, and committed crimes relating to misappropriation of property of others, causing material damage to public interests in especially important amount.

4.9 The State party explains in particular that D., by entering into a criminal arrangement with B. and C., changed the status of the subsidiary company “Uch Qahramon non” without the consent of its staff and workers to establish of a limited responsibility company, falsified documents and privatized the company (under his own name and the name of his nephew, C.) with total value of 34 235 459 soums, through illegal means and without investing any financial capital.

4.10 In addition, D., again acting in a prior criminal arrangement with his brother and his brother’s deputy, obtained through “Uzdonmahsulot” flour and related materials at cut-prices for the “Uch Qahramon ltd.” company. According to the State party, D. had thus

⁶ According to the State party, they were charged under article 205 of the Criminal Code (Abuse of power or abuse of authority by an official).

used the funds for his own interest, and he had contributed to the decreasing of the amount of flour funds distributed by the Government among other regions of the country.

4.11 The State party further contends that the author's allegations in the present communication are groundless⁷.

4.12 According to the State party, during the preliminary investigation and in court, D. had stated that his term of office as Director of the company "Uch Qahramon non" was from 1995 to March 1999, that he had not registered the company illegally, had not committed misappropriation of someone else's property, and had not taken funded flour from "Uzdonmahsulot"; he had also affirmed that the charges against him constituted slander. Notwithstanding, the court found him guilty on the basis of the exiting evidence which was dully assessed during the trial. A number of officials had confirmed in court that "Uzdonmahsulot" State Company had provided "Uch Qahramon non" with several hundred tons of flour. One of D.'s co-accused, had also confirmed the above-mentioned facts, and had explained that he had allocated the flour, due to insistent demands by his chief, B., to supply "Uch Qahramon non" with flour in any way⁸.

4.13 Another witness confirmed that the staff of "Uch Qahramon non" company had never signed the relevant forms for the privatization of the company. Other witnesses had stated during the investigation and in court that D. and C. should have submitted specific documents on the privatization of the company to "Uzdonmahsulot" State Company, but they never did it.

4.14 Additional witnesses contended during the investigation and in court that the "Uzbekistan-Ukraine Friendship Society" was established in 1998, with B. as its Chairperson. Under a secret order of B., a bank account of the Society was opened, and a number of money transfers were received from companies operating the "Uzdonmahsulot" sphere.

4.15 An inspector of the State Tax Inspectorate had confirmed in court that an official inspection of "Uch Qahramon non" company revealed a number of irregularities in the company's accountant documents, and that the real profit exceeded the amount declared by the company.

4.16 The State party further notes that in accordance with the conclusions of an official audit carried in July 2000, "Uch Qahramon non" had been illegally privatized and it had subsequently received different quantities of floor on credit without interest; flour was also received without payment; and preferential loans for several dozens of millions of soums were given to the company by "Uzdonmahsulot" Corporation in 1998 and 1999.

⁷ The State part mentions, in particular, (a) the author's allegations on the unfounded nature of the conviction of D., and the statement that it was based on non established evidence; (b) her allegations that her father had disappeared in March 2000, after having left for a meeting of the Cabinet of Ministers; the allegedly unsubstantiated character of the charges of the initial investigation against her father and her brother, C. (under search); (c) her allegations on the absence of designation by the preliminary investigation and the court of economic expert examination to identify the reasons of deficiency, as well as the correctness or incorrectness of distribution of grain funds in the State reserve; (d) her allegations on the absence of any irregularities in the activity of the "NZI" company; (e) her allegations on the psychological and physical pressure constantly exerted on the A. family during the preliminary investigation, which caused several members of the family to leave Uzbekistan.

⁸ According to the State party, the Chief of the Distribution section of « Uzdonmahsulot » had confirmed in court that, under the orders of one of the deputies of the author's father, he had released 710 tons of flour to « Uch Qahramon non ltd » from a « non-reimbursable fund ».

4.17 According to the State party, it was established that Uch Qahramon non” company had received inappropriately several hundreds tons of flour on the account of unused funded flour for other regions of Uzbekistan in 1999/2000.

4.18 The State party also points out that by decision of 27 June 2000, the Tashkent City Economic Court found null and void the decision of the governor of Yunusobod district of October 1997 on the establishment of “Uch Qahramon ltd”.

4.19 According to the State party, the above-mentioned facts have also been confirmed by the testimonies of D.’s co-accused in the same case, who were also convicted, and by other evidence.

4.20 The State party finally affirms that the initial investigation and the judicial proceedings have been conducted in accordance with the Uzbek Criminal Procedure Code, all complaints have been considered thoroughly, the evidence was assessed correctly, the guilt of D. was fully established, and his sentence was proportionate to the crimes committed.

Author’s comments on the State party’s observations

5.1 The author’s comments on the State party’s observations were received on 6 July 2009. First, the author affirms that the State party’s reply tend to present the case against her family as a purely economic one. According to her, however, her father was persecuted because he was not corrupt and had refused to obey illicit orders from his superiors⁹. B. had served for 22 years on decision-making posts in the domain of the bread in Uzbekistan and was a recognized professional. According to the author, the campaign against her father started only when he tried to warn the President about the irregularities and problems existing in the State’s bread industry.

5.2 The author explains that her family was obliged to leave the country for Russia, where they’ve spent two and a half years. Subsequently, the family moved to a country in the European Union and was granted political asylum there.

5.3 The author contends that her family is a victim of violations by Uzbekistan of their rights under article 7 of the Covenant. The author’s mother was psychologically pressured by law-enforcement authorities to force her to provide information on the author’s and her father’s activities. Her grand-mother was humiliated by the police when searching her house, apparently trying to find the “millions” hidden by B. there. Her uncle was subjected to violence during the preliminary investigation but also subsequently to his conviction, according to the author, to force him to testify against her and her father.

5.4 With reference to article 14 of the Covenant, the author claims that during the preliminary investigation, her mother had to change lawyers several times, because of pressure by the authorities. During the court trial of her uncle, the author prepared a number of complaints that were adduced to the case file but were never examined or were simply rejected. The Ombudsman, like other institutions, ignored their complaints.

5.5 The author further claims that the appeal filed by her uncle was dismissed. In addition, due to alleged pressure, no one accepted to testify on his behalf.

5.6 With reference to article 17 of the Covenant, the author claims that while questioning her mother, police officers arbitrarily interfered in her family life, as they alleged that B. had had extra-marital relations and children. The author contends that these

⁹ The author claims, for example, that her father had refused to carry out requests by the Prime-Minister to falsify documents on the de facto available quantities of grain or to produce wrong data on the grain quality (humidity, etc).

statements sought to destabilise her mother in order to obtain evidence against the author's father.

5.7 The author invokes article 19 of the Covenant, and emphasizes that the family's repression started when her father wrote officially to high-ranked officials to inform them about the existing problems within the bread sector in Uzbekistan.

5.8 The author notes the State party's affirmation that her brother and her uncle had committed a theft in a particularly important amount, through an unlawful privatization of a company, unlawful acquisition of flour from the State reserve, and unlawful obtaining of credits. She provides details about the history of the acquisition of the company by her uncle and brother, and information on the functioning of the firm. According to her, the investigation and the court proceedings were biased, as the company in question was acquired legally, not through privatization but through a transaction financed by a loan, the flour was also procured lawfully, and no irregularities were committed in the obtaining or the use of the loans in question.

5.9 The author further affirms that the State party's explanation that her father was the founder of an Uzbek-US joint-venture, and that he had abused of his official situation in order to unlawfully acquire ten mini-bakeries is not correct. She contends that when the authorities had accused her father of having appropriated the mini-bakeries in question, the latter still appeared in the accounts of the State property Committee. Later, the bakeries were sold by this Committee to the joint-venture, through an official tender following a decision by the Committee of Ministers.

5.10 The author further challenges the State party's affirmation on her father's involvement in financial irregularities through the society "Uzbekistan-Ukraine". According to her, all decisions on loans, salaries, etc, were taken exclusively by the society's executive director, and not by her father (the society's Chair). Therefore, in the author's opinion, all irregularities in the functioning of this society should not be imputed to her father. According to the author, her father's charges in this respect were only based on the testimonies of two witnesses, obtained through unlawful means.

5.11 The author further rejects the State party's affirmation that she had obtained a preferential loan when working for the company "NZI" and that she had transferred the funds to her personal account, thus causing a loss of more than 150 millions of soums. She admits that the loan was contracted by the company, what permitted to pay a counterpart in advance. Later, the counterpart failed to comply with its obligations, which was confirmed by a court decision. However, as the authorities have started persecuting her and all "NZI" bank accounts were blocked and the seals, etc were seized, the money in question could never be recovered by the counterpart. Subsequently, the belongings of "NZI" were sold by the authorities.

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 the 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 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee has noted the author's allegations that her and the other alleged victims' rights under articles 2; 7; 9; 10; 11; 14; 19; and 26, have been violated. It notes that

these allegations have not been directly refuted, even if the State party had affirmed that all the author's allegations were groundless. In light of the material on file, however, and in the absence of any other pertinent, detailed, and documented information in this respect by the parties, the Committee considers that these allegations are insufficiently substantiated, for purposes of admissibility, and are accordingly inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides that:

(a) the communication is inadmissible pursuant to article 2 of the Optional Protocol;

(b) this decision will be transmitted to the author and, for information, to the State party.

[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.]
