



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-seventh session
12-30 October 2009

VIEWS

Communication No. 1401/2005

<u>Submitted by:</u>	Mrs. Nadezhda Kirpo (not represented by counsel)
<u>Alleged victim:</u>	The author's son, Mr. Pavel Kirpo
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	26 May 2005 (initial submission)
<u>Document References:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 2 June 2005 (not issued in document form).
<u>Date of adoption of Views:</u>	27 October 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Unlawful arrest; forced confessions obtained with use of beatings and torture, in the absence of a lawyer.

Procedural issue: level of substantiation of claims.

Substantive issues: Torture; forced confessions; habeas corpus; right to defense.

Articles of the Covenant: 7; 9; 14, paragraph 3 (d) and (g)

Article of the Optional Protocol: 2

On 27 October 2009, 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.1401/2005.

[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-seventh session

concerning

Communication No. 1401/2005**

<u>Submitted by:</u>	Mrs. Nadezhda Kirpo (not represented by counsel)
<u>Alleged victim:</u>	The author's son, Mr. Pavel Kirpo
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	26 May 2005 (initial submission)

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

Meeting on 27 October 2009,

Having concluded its consideration of communication No. 1401/2005, submitted to the Human Rights Committee on behalf of Mr. Pavel Kirpo 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. The author of the communication is Mrs. Nadezhda Kirpo, a Tajik resident of Russian origin born in 1956, who claims that her son, Pavel Kirpo, also a Tajik resident of Russian origin born in 1977, is a victim of violations of his rights under article 7; article 9, paragraphs 1 and 3; and article 14, paragraph 3 (d), of the Covenant. Although the author does not invoke it specifically, the communication appears also to raise issues under article 14, paragraph 3 (g), of

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanut, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

The text of an individual opinion signed by Committee member Ms. Ruth Wedgwood is appended to the present Views.

the Covenant. The author is unrepresented by counsel. The Optional Protocol entered into force for the State party on 4 April 1999.

The facts as presented by the author

2.1 The author contends that in 2000, her son was employed by the United Nations Organisation as an assistant to the head of the unit in charge of the project services in Tajikistan¹. On 7 May 2000, he was arrested by officials of the Ministry of Security, allegedly while trying to commit a robbery of 100 000 US dollars from the UN premises in Dushanbe. On 17 January 2001, the Dushanbe City Court convicted him to 15 years prison term, with confiscation of his belongings. On 23 May 2001, the Supreme Court confirmed the sentence.

2.2 The author explains that according to the Dushanbe City Court, her son planned to commit the robbery together with three other individuals (K., S., and B., whose whereabouts could not be established), and he had entered in a secret agreement with them, thus creating a criminal organised group. On 6 May 2000, he obtained illegally a revolver with a silencer and ammunition for it from K. On 7 May 2000, the author's son entered into the UN premises armed with the revolver, and as agreed with K., spoke to two security guards in an attempt to obtain their promise that they would not prevent him in committing the intended theft in exchange of 20 000 US dollars to be shared by them. The guards apparently agreed but in the meantime they secretly contacted the Ministry of Security. An intervention group from this Ministry arrived shortly after and Mr. Kirpo was detained.

2.3 The author claims that on 7 May 2000, her son was brought to the premises of the Ministry of Security and was kept there until 20 May 2000. On 7 May 2000, the authorities detained also Mr. Kirpo's wife and kept her in the Ministry of Security until 9 May 2000. It was Mr. Kirpo's wife who informed the author of the communication, in a phone conversation of 8 May 2000, about their arrests and whereabouts. The author explains that her son was kept isolated and could not meet with his relatives. She only could meet with him on 19 May 2000, in the building of the Ministry of Security; he had lost a lot of weight and was all black and blue. Later on 19 May 2000, she spoke with a representative of the United Nations in Dushanbe about her son's arrest. The representative met with her son in presence of an investigator of the Ministry of Security, I.R.. According to the author, the representative later explained to her that her son was unable to speak, had broken ribs, and could move with big difficulties.

2.4 According to the author, during his detention at the Ministry of Security, her son was severely beaten and tortured with use of electricity on different parts of his body in order to force him to give depositions. He was also hit with police batons and metal sticks to the point that he had ribs broken and had difficulties in talking and moving. In court, the lawyers of the author's son invoked this issue on a number of occasions, but their complaints were simply ignored.

2.5 The author also claims that her son was detained unlawfully as after his apprehension on 7 May 2000, he was kept in the Ministry of Security until 20 May 2000. The author contends that during this period, her son was not represented by a lawyer nor was he officially informed of his procedural rights. Notwithstanding, he personally requested several times the investigators to be

¹ The author provides neither the exact title of her son nor the exact name of the department in which he was employed.

allowed to be represented by a lawyer but with no result. His arrest as a suspect of a crime was recorded on 20 May 2000 only, i.e. thirteen days after his actual apprehension. The same day, he was interrogated as a suspect, again in the absence of a lawyer², and was officially charged with robbery. Following this, the author's son was detained for two days in the Ministry of Internal Affairs, and was placed in custody in an Investigation Detention Centre (SIZO) on 23 May 2000.

2.6 The author contends that her son's lawyer complained during the court trial about the unlawful detention of her son for thirteen days, but the court, instead of pronouncing itself on the nature of the detention, simply ruled out that the period of time between 7 and 19 May 2000³ is to be taken into account when calculating her son's prison term.

2.7 The author further claims that her son's official arrest – on 20 May 2000 – has been sanctioned by a Prosecutor on 23 May 2000 and not by a court. She contends that the prosecutor is not an organ which can exercise judicial authority.

The complaint

3.1 The author claims that her son is a victim of violation of his rights under article 7, as he was beaten and tortured by officials of the Ministry of Security, and forced to confess guilt. Although the author does not invoke it specifically, this claim appear also to raise issues under article 14, paragraph 3 (g), of the Covenant.

3.2 The author also claims a violation of the rights of her son under article 9, paragraphs 1 and 3, as he was detained unlawfully for thirteen days, and as once it was decided to place him officially in pre-trial detention, the legality of this decision was not controlled by a court but by a prosecutor.

3.3 The author further invokes a violation of her son's right to defence as protected by article 14, paragraph 3 (d), given that he was not represented by a lawyer at the early stages of the investigation.

State party's failure to cooperate

4. The State party was invited to present its observations on the admissibility or/and the merits of the communication in June 2005, and reminders were sent in this respect in October 2006, March 2008, and February 2009. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the authors' claims. It recalls that under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have taken. In the absence of a reply from the State party, due weight must be given to the authors' allegations, to the extent that these have been properly substantiated.

² The author explains that on 20 May 2000, she did hire a lawyer to represent her son, but the lawyer was allowed to participate in the proceedings on 23 May 2000 only.

³ The author explains that her son remained in the Ministry of Security until 20 May, but the Court has affirmed that it was until 19 May 2000.

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

5.3 The Committee has noted the author's claim that she had hired a lawyer to defend her son on 20 May 2000 (date of the official indictment of her son), but the attorney was only allowed to participate in the proceedings as of 23 May 2000. The Committee observes that these allegations may raise issues under article 14, paragraph 3 (d), of the Covenant. In the absence of any other explanations in this respect by the parties, however, and in the absence of any pertinent information on file, the Committee considers that this part of the communication is inadmissible under article 2 of the Optional Protocol as insufficiently substantiated for purposes of admissibility.

5.4 The Committee has noted the author's detailed allegations that, contrary to article 7 of the Covenant, her son was beaten and tortured and forced to confess guilt. It considers that although the author has not invoked it specifically, this part of the communication also raise issues under article 14, paragraph 3 (g) of the Covenant. In the absence of any observations by the State party, the Committee considers that these allegations are sufficiently substantiated, for purposes of admissibility, and therefore the communication is admissible under article 7 and 14, paragraph 3 (g), of the Covenant.

5.5 The Committee has further noted the remaining part of the author's allegations under article 9 of the Covenant, as her son was kept for thirteen days in the Ministry of Security, with no legal counsel, and as the subsequent decision to have him placed in custody officially was not controlled by a court but by a prosecutor. The Committee considers that these allegations are sufficiently substantiated for purposes of admissibility, and declares them admissible.

Consideration on the merits

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

6.2 The Committee notes the author's claims that her son was detained unlawfully for thirteen days, in the Ministry of Security, with no access to lawyer and no possibility, for twelve days, to contact his relatives. During this period, he was beaten and tortured by investigators and forced to confess guilt in a robbery. The Committee notes that the author provides a fairly detailed description of the manner in which her son was beaten and on the method of torture used (electroshocks). The author also explains that the courts have failed in their duty to order a prompt inquiry on the alleged torture and ill-treatment of her son, and that they have disregarded

the claims of the lawyers of her son in this respect. In the absence of any reply by the State party, the Committee considers that due weight must be given to the author's allegations.

6.3 The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially⁴. It considers that in the circumstances of the present case, the facts as presented by the author and which are uncontested by the State party reveal a violation, by the State party, of the rights of the author's son under article 7 and article 14, paragraph 3 (g), of the Covenant.

6.4 The Committee notes that the author has claimed that her son was apprehended by officials of the Ministry of Security on 7 May 2000 and detained isolated, without being informed officially of the reasons of detention and without providing him with legal representation in spite of his numerous requests to that effect, in the premises of the Ministry of Security until 20 May 2000, when he was officially charged. The author further claims that when the issue was raised by her son's lawyer during the trial, the court failed to give a legal qualification on the nature of the detention of her son during the thirteen initial days of detention. In the absence of any explanations by the State party in this respect, the Committee decides that due weight must be given to these allegations. The Committee recalls that article 9, paragraph 1 of the Covenant requires that no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Article 9, paragraph 2, requires that anyone arrested shall be informed at the time of arrest of the reasons of arrest and of any charges against him. Even if in the present case, the facts as presented demonstrate that the authorities had sufficient grounds to apprehend the author's son as a suspect, the Committee considers that the fact that he was kept in detention for thirteen days before his actual arrest to be documented formally and without informing him officially of the reasons of his arrest, constitutes a violation of Mr. Kirpo's rights under article 9, paragraphs 1 and 2, of the Covenant.

6.5 The author has also claimed that her son was officially placed in pre-trial detention on 20 May 2000, but he was never brought before a court to verify the lawfulness of his detention and his detention was sanctioned by a prosecutor, in violation of article 9, paragraph 3, of the Covenant. The Committee recalls⁵ that paragraph 3 of article 9 entitles a detained person charged with a criminal offence to judicial control of his/her detention. It is inherent in the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. In the circumstances of the case, the Committee is not satisfied that the public prosecutor can be characterized as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3, and concludes that there has been a violation of this provision.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 7; article 9,

⁴ Human Rights Committee, General Comment No. 20, paragraph 14.

⁵ See, inter alia, *Rozik Ashurov v. Tajikistan*, Communication No. 1348/2005, Views adopted on 20 March 2007, paragraph 6.5; *Kulomin v. Hungary*, Communication No. 521/1992, Views adopted on 22 March 1996, paragraph 11.3; *Platonov v. Russian Federation*, Communication No. 1218/2003, Views adopted on 1 November 2005, paragraph 7.2

paragraphs 1-3; and article 14, paragraphs 3 (g), of the International Covenant on Civil and Political Rights.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author's son with an effective remedy, including initiation and pursuit of criminal proceedings to establish responsibility for ill-treatment of the author's son, an appropriate reparation including compensation, and to consider his retrial in conformity with all the guarantees enshrined in the Covenant or his release. The State party is also under an obligation to prevent similar violations in the future.

9. 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 180 days, information about the measures taken to give effect to the Committee's views.

[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.]

APPENDIX

Individual opinion of Committee member Ms. Ruth Wedgwood

In this case, Tajikistan has not responded to four successive invitations sent to the State party, over the course of almost four years, to answer the allegation that Tajik state security agents carried out the torture of a former U.N. employee suspected of an attempted robbery and that Tajik courts have refused to investigate the matter. The complaint was brought to this Committee from the mother of the alleged victim. I join my colleagues in the conclusion that the author's allegations, in the absence of an answer by the State party, suffice to find a breach by the State party of articles 7 and 14 (3)(g) of the International Covenant on Civil and Political Rights.

The allegations in this case are a bit unusual. Mr. Pavel Kirpo was employed as an assistant in the U.N. office in Dushanbe, Tajikistan. On 6 May 2000, he allegedly brought a revolver to the U.N. facility, intending to steal \$100,000 in cash from his employer. The U.N. security guards summoned the Tajik authorities, rejecting an attempt by Mr. Kirpo to corrupt them into permitting the robbery to go forward.

An "intervention group" of state agents responded to the scene and arrested Mr. Kirpo, holding him incommunicado for 13 days at the Ministry of Security, where he was allegedly beaten and tortured with electricity, batons and metal sticks. His wife was also arrested and held for two days. Mr. Kirpo was not allowed to see a lawyer in this period and was charged with a crime only after his interrogation was complete. The local judiciary apparently refused to investigate the claim that he was abused, in abdication of its responsibility to assure that the prisoners brought before them on criminal charges are treated with physical decency. These uncontested facts suffice to find violations of Articles 7, 9 and 14 of the Covenant on Civil and Political Rights, and I join the Committee's conclusions.

But there is another delicate aspect of this matter which strikes closer to home and, in the discharge of conscience, demands remark. Namely, it is not clear whether U.N. authorities made any attempt to monitor the whereabouts or condition of their employee for a period of 12 days following his arrest at U.N. headquarters. The Committee has not called for any *amicus* comment by the United Nations on this set of facts.

A U.N. representative apparently did visit the former employee (who by then had been fired) on 19 May 2000, after Mr. Kirpo's mother sought his intervention. This visit unfortunately came too late, after the severe beatings had occurred. Mr. Kirpo's mother states that the U.N. representative reported that the ribs of her son had been broken, that he could move only with difficulty, and that he was unable to speak. See Views of the Committee, paragraph 2.3. It is not known whether the U.N. official filed any official report about the visit, though he is to be congratulated for taking even these steps to prevent further harm.

The Covenant does not, as such, have international organizations as parties and the complaint mechanism of the Optional Protocol only extends to States Parties. One also hesitates insofar as the U.N. office in Dushanbe and its former employees have not had an opportunity to comment on this matter.

Nonetheless, given the seriousness of the events alleged in this case, it seems necessary to recall that the United Nations in its activities around the world must seek to assure the observance of human rights. Under the Covenant, the Committee has consistently demanded of State parties that affirmative and effective steps must be taken, when a prisoner is transferred to another State, to assure that he is treated humanely. While the U.N. has no independent police authority in most of the states in which it operates, one may hope that the organization would take the same precautions in assuring the well-being of individuals whose arrest the organization itself has requested, not least, its own employees. This would include checking promptly and periodically upon the status of the individuals and their condition, and assuring that they have representation by an attorney during the course of their detention and trial. The right to be free from torture is not subject to derogation or suspension, and does not depend upon a treaty text.

Without assuming the truth of the author's allegations, the set of circumstances alleged here would seem to warrant reflection and study by the United Nations. This may focus on the elaboration of precautionary standards for preventing any recurrence of such alleged facts in the future.

[*signed*] Ruth Wedgwood

[Done 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.]
