



**International covenant
on civil and
political rights**

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

VIEWS

Communication No. 1284/2004

<u>Submitted by:</u>	Mrs. Kholida Turaeva (not represented by counsel)
<u>Alleged victim:</u>	The author's son, Mr. Sodik Kodirov
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	11 May 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 12 May 2004 (not issued in document form)
<u>Date of adoption of Views:</u>	20 October 2009

* Made public by decision of the Human Rights Committee.

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

Substantive issues: Right to life; torture, cruel, inhuman or degrading treatment or punishment; right not to be compelled to testify against oneself or to confess guilt; effective remedy.

Procedural issue: Non-exhaustion of domestic remedies.

Articles of the Covenant: 6; 7, read together with 2; 7, read together with 14, paragraph 3(g); and 14, paragraph 1

Article of the Optional Protocol: 5, paragraph 2(b)

On 20 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. 1284/2004.

[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. 1284/2004**

<u>Submitted by:</u>	Mrs. Kholida Turaeva (not represented by counsel)
<u>Alleged victim:</u>	The author's son, Mr. Sodik Kodirov
<u>State party:</u>	Uzbekistan
<u>Date of communications:</u>	11 May 2004 (initial submission)

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

Meeting on 20 October 2009,

Having concluded its consideration of communication No. 1284/2004, submitted to the Human Rights Committee on behalf of Mr. Sodik Kodirov 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 Mrs. Kholida Turaeva, an Uzbek national, date of birth unspecified. She submits the communication on behalf of her son, Mr. Sodik Kodirov, an Uzbek national born in 1974, who at the time of submission of the communication was detained on

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanut, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, 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, Mr. Krister Thelin and Ms. Ruth Wedgwood.

The text on an individual opinion co-signed by Committee members Mr. Fabian Omar Salvioli, Ms. Christine Chanut and Ms. Zonke Zanele Majodina is appended to the present Views.

death row in Tashkent, after being sentenced to death by the Tashkent City Court on 17 December 2003. Although the author does not claim a violation by Uzbekistan of any specific provisions of the International Covenant on Civil and Political Rights, the communication appears to raise issues under article 6; article 7, read together with article 2; article 7, read together with article 14, paragraph 3(g); and article 14, paragraph 1, of the Covenant. The author is unrepresented. The Optional Protocol entered into force for the State party on 28 December 1995.

1.2 Under rule 92 of its Rules of procedure, the Committee, acting through its Special Rapporteur for New Communications and Interim Measures, requested the State party, on 12 May 2004, not to carry out the execution of the author's son, pending the consideration of the case. This request was reiterated by the Committee on 18 October 2004. By letter of 11 November 2004, the State party informed the Committee that it acceded to the request for interim measures. On 1 May 2009, following the Committee's request for an update on the status of Mr. Kodirov's death sentence after the abolition of the death penalty in Uzbekistan as of 1 January 2008, the State party forwarded information that on 29 January 2008, the Supreme Court of Uzbekistan had commuted Mr. Kodirov's death sentence to life imprisonment.

Factual background

2.1 The author claims that when her son was arrested on 9 June 2003, he was subjected to torture by police officers for the purpose of extracting a confession. In particular, she states that her son was raped while in detention, and so severely mistreated that he had to be taken to a prison hospital and operated on. Allegedly, when she visited her son in detention on 10 June 2003, he did not recognise her and, as a result of the beatings, he could not walk unaided. The author submits that investigators must have used a sharp object to injure her son, because he had cuts all over his body.

2.2 On 17 December 2003, the Tashkent City Court handed down a death sentence, convicting the author's son on multiple counts of 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 by a recidivist with infliction of serious bodily harm (article 164, part 3); illegal acquisition and dealing in currency values (article 177, part 3); and acquisition, destruction, damage or concealment of documents, stamps, seals, forms (article 227, part 2). The author's son was also recognized as a particularly dangerous recidivist. On 6 February 2004, the case was heard by the Appeal Chamber of the Tashkent City Court, which reclassified the author's offences from part 3 of article 177, to the lesser part 2 thereof and dismissed one count of attempted premeditated murder under aggravating circumstances (article 25 and article 97, part 2). The death sentence, however, was upheld. On 10 and 31 March 2004, the First Deputy Chairperson of the Supreme Court requested a dismissal of a number of counts of attempted premeditated murder under aggravating circumstances (article 25 and article 97, part 2, of the Criminal Code) and premeditated murder under aggravating circumstances (article 97, part 2) through the supervisory review procedure. These requests were granted on 23 March and 16 April 2004, respectively. The author's son's death sentence, however, was retained. On an unspecified date, the author's son filed a request for a presidential pardon but no response was received.

2.3 According to the author, her son claimed in court that he was beaten and tortured during the pre-trial investigation to force him to plead guilty and showed marks of torture on his body. The court, however, considered her son's statements as an attempt to avoid responsibility and punishment for the crimes committed. The author further submits that at the start of her son's trial, she was told by the judge that if she were to come to the court hearings, he would inform the victims and they would take the law into their own hands and kill her together with her son in the court building. The judge allegedly added that "death was awaiting her son in any event". The author concludes, therefore, that her son's trial was not fair and that the court was partial.

The complaint

3. Although the author does not specifically invoke any provisions of the Covenant, the communication appears to raise issues under article 6; article 7, read together with article 2; article 7, read together with article 14, paragraph 3(g); and article 14, paragraph 1, of the Covenant.

State party's observations on admissibility and merits

4.1 On 11 November 2004, the State party submits that, on 17 December 2003, the author's son was found guilty of premeditated murder of five persons with particular cruelty and under aggravating circumstances, as well as of robbery, and sentenced to death. Between 10 May and 7 June 2003, the author's son assaulted, battered and robbed sixteen women, including one minor, who were walking unaccompanied late in the evening, took possession of their valuables and subsequently sold them to third persons. As a result of serious bodily injuries inflicted by the author's son and despite medical intervention, five of the victims died. The State party provides a short description of the sixteen incidents on the basis of which the author's son was subsequently charged and found guilty.

4.2 The State party submits that the guilt of the author's son was proven by his own confession, the verification of his confession at the crime scenes, witnesses' and victims' testimonies, case file materials, conclusions of forensic experts, fingerprints and psychiatric examinations.

4.3 The State party submits that all of the author's claims about a violation of her son's rights presented in her communication to the Committee, that is, allegations of torture, rape and intimidation of her son, as well as of other violations of criminal procedure law, are unsubstantiated. There is no evidence in the author's son's criminal case file that he was subjected to physical or mental pressure during a pre-trial investigation and subsequent proceedings. Equally, there is no information about medical treatment that the author's son had to undergo as a result of the alleged ill-treatment.

4.4 The State party further submits that, starting from the first interrogation of the author's son on 9 June 2003, he was represented by a lawyer. Upon the completion of the pre-trial investigation, the author's son and his lawyer were given access to the case file from 5 to 11 September 2003. In addition, upon the lawyer's request, the trial was postponed from 2 to 3 October 2003, in order to give her the opportunity to further study the case file materials. Neither at this stage, nor in court, did the author's son or his lawyer complain about ill-treatment during the pre-trial investigation. The issue of alleged violation of the author's son's rights in criminal

proceedings has not been raised by his lawyer either orally or in writing before the Appeal Chamber of the Tashkent City Court on 6 February 2004.

4.5 The State party submits that there is neither evidence nor information in the case file materials about the alleged pressure exercised against the author by the judge of the Tashkent City Court. In fact, the author was present at the court hearings and has not made any oral or written statements about the alleged violation of criminal procedure law.

4.6 The State party concludes that the pre-trial investigation and court proceedings were conducted in full compliance with the Criminal Procedure Code. All charges and evidence were thoroughly examined and evaluated, and his guilt was duly proven. While imposing the punishment, the court took into account the author's son's three previous convictions, the fact that he presented a public danger and the severe nature of the crimes committed.

Author's comments on State party's observations

5.1 On 18 January 2005, the author adds on the facts that her son was arrested in the absence of witnesses and without the arrest protocol being drawn up. The private belongings attributable to him were in fact seized on 8 June 2003 in the apartment of a third person. The author challenges her son's role and/or degree of participation in each of the sixteen incidents referred to by the State party (see paragraph 4.1 above). She concludes that the charges against her son were unsubstantiated and/or excessive.

5.2 The author refers to the Resolution of the Plenum of the Supreme Court of 20 November 1996, according to which evidence obtained through the use of unlawful methods, such as physical force (torture, beatings), psychological and moral pressure is void. She submits that the confession "beaten out" of her son under torture during pre-trial investigation was used by the court in determining his role in the crimes. The author submits a copy of the medical certificate signed by the Head of the detention facility UYA 64/IZ-I and dated 21 May 2004, according to which "while in detention in the facility, Mr. Sodik Kodirov, underwent an inpatient treatment from 13 to 23 June 2003, in connection with self-inflicted injury. Diagnosis: Avulsed wound of the lower third of the right forearm. Posthemorrhagic anemia. Was examined by the psychiatrist in connection with the complaints about insomnia. Diagnosis: Asthenoneurotic syndrome without active pathology. Out-patient treatment prescribed." The author adds that the medical certificate fails to document that at the time in question, her son's arm was broken, there was a wound in his head and a stab wound to his chest.

5.3 The author concludes that the pre-trial investigation and court proceedings in her son's case were superficial and were carried out "in a particularly accusatory manner". Therefore, the trial was not fair and the court was partial.

Supplementary submissions

6. On 20 February 2009, the Committee reiterated its earlier request to the State party of 12 May 2004 to provide a full trial transcript of Mr. Kodirov's court hearing in the Tashkent City Court. On 1 May 2009, the State party notified the Committee that, according to article 475 of the Criminal Procedure Code, copies of the judgment and of other court documents are made available only to the parties to criminal proceedings. For this reason, a copy of the trial transcript

of Mr. Kodirov's court hearing in the Tashkent City Court could not be made available to the Committee.

7. On 5 May 2009, the State party's Note Verbale of 1 May 2009 was forwarded to the author with the request for comments and a copy of the full trial transcript of Mr. Kodirov's court hearing in the Tashkent City Court. No response has been received.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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.

8.2 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.

8.3 The State party has argued that the author's claims about a violation of her son's rights presented in her communication to the Committee, that is, allegations of torture, rape and intimidation of her son, were never raised before the domestic authorities or courts, which renders this part of the communication inadmissible under 5, paragraph 2(b), of the Optional Protocol, for failure to exhaust all available domestic remedies. The author, in turn, argued that her son claimed in court that he had been beaten and tortured during the pre-trial investigation to force him to plead guilty and showed marks of torture on his body; his statements, however, were not taken into account and his initial confession was used by the court in determining his role in the crimes. In light of these conflicting arguments, the State party and the author were requested by the Committee to provide a copy of the full trial transcript of Mr. Kodirov's court hearing in the Tashkent City Court, in order to enable the Committee to make an informed decision on the issue of exhaustion of domestic remedies. This critical document, however, has not been received. Notwithstanding the fact that the author is unrepresented, the State party merely referred to the provision in its domestic criminal procedure law, i.e. that court documents are made available only to the parties, as an obstacle for compliance with the Committee's request and implied that the trial transcript in question could be obtained through the author, instead of fulfilling its duty to provide the document itself.

8.4 In this regard, the Committee reaffirms its jurisprudence¹ that the burden of proof cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to the evidence and frequently the State party alone has the relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to furnish to the Committee the information

¹ See, e.g. Communication No. 30/1978, *Bleier v. Uruguay*, Views adopted on 24 March 1980, paragraph 13.3; Communication No. 139/1983, *Conteris v. Uruguay*, Views adopted on 17 July 1985, paragraph 7.2; and Communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, paragraph 8.3.

available to it. In cases where the allegations are corroborated by credible evidence submitted by the author and where further clarification depends on information exclusively in the hands of the State party, the Committee may consider the author's allegations substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party. In the present communication, the Committee takes into account that the State party did not provide any corroborating documentation to refute the author's claim that her son's rape and torture allegation were raised before the domestic courts, although the State party had the opportunity to do so, and which the author has sufficiently substantiated. Therefore, the Committee considers that it is not precluded by article 5, paragraph 2(b), of the Optional Protocol from examining the communication.

8.5 The Committee notes that, although the author in her submissions does not specifically invoke any provisions of the Covenant, her allegations and the facts as submitted to the Committee appear to raise issues under article 6; article 7, read together with article 2; and article 7, read together with article 14, paragraph 3(g), of the Covenant. The Committee considers that the author has sufficiently substantiated these claims, for purposes of admissibility, and declares them admissible.

8.6 The author's claim that her son's trial court was unfair and not impartial seems to raise issues also under article 14, paragraph 1, of the Covenant. The Committee, however, does not consider this claim to be sufficiently substantiated and, therefore, finds this part of the communication inadmissible under article 2 of the Optional Protocol.

Consideration of the merits

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

9.2 The author has claimed that her son was raped and subjected to torture while in police custody for the purpose of extracting a confession, to the extent that he had to be hospitalised. In support of her allegations, the author submitted a copy of the medical certificate issued by the Head of the detention facility and dated 21 May 2004, according to which Mr. Kodirov was hospitalised from 13 to 23 June 2003, in connection with self-inflicted injury. She also claimed that the medical certificate failed to document other serious injuries on her son's body. The State party merely affirmed that the author's allegations are unsubstantiated and that there was no information about medical treatment that her son had to undergo as a result of the alleged ill-treatment. The Committee notes, however, that the State party did not explain whether, in light of the author's rape and torture allegations, any investigation took place in relation to Mr. Kodirov's documented injury which required hospitalisation and appeared while he was in the State party's custody. The Committee must, in the circumstances, give due weight to the author's allegations. The Committee recalls that a State party is responsible for the security of any person under detention and, when an individual is injured while in detention, it is incumbent on the

State party to produce evidence refuting the author's allegations.² In light of the information provided by the author, the Committee concludes that the lack of adequate investigation into the allegations of ill-treatment in custody of her son amounted to a violation of article 7, read together with article 2, of the Covenant.

9.3 Furthermore, as regards the author's claim of a violation of her son's rights, in that he was forced to sign a confession under torture, the Committee recalls its jurisprudence³ that the wording of article 14, paragraph 3(g), must be understood in terms of the absence of any direct or indirect physical or psychological coercion by the investigating authorities on the accused with a view to obtaining a confession of guilt. The Committee also recalls that the burden is on the State to prove that statements made by the accused have been given of their own free will.⁴ In these circumstances, the Committee concludes that the facts before it disclose a violation of article 7, read together with article 14, paragraph 3 (g), of the Covenant.

9.4 The Committee recalls its jurisprudence to the effect that the imposition of a death sentence after a trial that did not meet the requirements for a fair trial amounts also to a violation of article 6 of the Covenant.⁵ In the present case, however, the death sentence imposed on 17 December 2003 was commuted to life imprisonment on 29 January 2008. In these circumstances, the Committee considers it unnecessary to examine separately the author's claims falling under article 6 of the Covenant.

10. 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. Kodirov's rights under article 7, read together with article 2; and article 7, read together with article 14, paragraph 3(g), of the Covenant.

11. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Mr. Kodirov with an effective remedy. The remedy should include a new trial that would comply with fair trial guarantees of article 14 of the Covenant, impartial investigation of the author's claims falling under article 7, prosecution of those responsible, and full reparation, including adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

12. 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

² Communication No. 907/2000, *Siragev v. Uzbekistan*, Views adopted on 1 November 2005, paragraph 6.2; and Communication No. 889/1999, *Zheikov v. Russian Federation*, Views adopted on 17 March 2006, paragraph 7.2.

³ Communication No. 330/1988, *Berry v. Jamaica*, views adopted on 4 July 1994, paragraph 11.7, Communication No. 1033/2001, *Singarasa v. Sri Lanka*, views adopted on 21 July 2004, paragraph 7.4, and Communication No. 912/2000, *Deolall v. Guyana*, views adopted on 1 November 2004, paragraph 5.1.

⁴ See General Comment No. 32, CCPR/C/GC/32, 23 August 2007, paragraph 41, *Singarasa v. Sri Lanka*, paragraph 7.4, Communication No. 253/1987, *Kelly v. Jamaica*, views adopted on 8 April 1991, paragraph 5.5.

⁵ See, e.g., *Siragev v. Uzbekistan*, supra n.2, paragraph 6.4.

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. 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 also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

APPENDIX

Individual opinion of Committee members Ms. Christine Chanet, Ms. Zonke Zanele Majodina and Mr. Fabián Omar Salvioli (partly dissenting)

1. In general we concur with the deliberations and conclusions reached by the Human Rights Committee in communication No. 1284/2004 “*Turaeva v. Uzbekistan*”, but regret that we cannot agree with the findings in the final part of paragraph 9.4, in which, although the Committee correctly recalls that “the imposition of a death sentence after a trial that did not meet the requirements for a fair trial amounts also to a violation of article 6 of the Covenant”, then concludes there has not been a violation of article 6 in the case in question because “the death sentence imposed on 17 December 2003 was commuted to life imprisonment on 29 January 2008”.
2. Uzbekistan has made significant advances in its domestic legislation in terms of respect for and guarantees of the right to life, as shown by the fact that, on 23 December 2008, the State ratified the second Optional Protocol to the International Covenant on Civil and Political Rights, thus demonstrating its commitment to the abolition of capital punishment. Moreover, in the *Turaeva* case, the Committee had requested interim measures, and the State responded positively on 11 November 2004. This demonstrates the State’s fulfilment in good faith of the international obligation undertaken on ratification of the International Covenant on Civil and Political Rights to take the necessary measures to give full effect to the Committee’s decisions.
3. The above does not excuse the Committee from giving an opinion on the facts of a specific case, as considered under this individual communication. In our view it is inappropriate — most pertinently for the purposes of proper reparation — for a body such as the Committee to fail to give an explicit opinion on a violation of a human right recognized in one or more articles of the International Covenant on Civil and Political Rights.
4. In its general comment No. 6, the Human Rights Committee states that “the expression ‘most serious crimes’ must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence ...” (Human Rights Committee, sixteenth session (1982), general comment No. 6: Article 6 (Right to life), para. 7.)
5. A violation of article 6, paragraph 2, exists regardless of whether the death penalty was actually carried out. As the Committee itself has stated before, “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 Covenant” (communication No. 1096/2002: *Tajikistan*. 12 November 2003. *Safarmo Kurbanova* CCPR/C/79/D/1096/2002, para. 7.7). This case law

was based on earlier decisions in which the Committee stated that a preliminary hearing that failed to observe the guarantees of article 14 violates article 6, paragraph 2, of the Covenant (*Conroy Levy v. Jamaica*, communication No. 719/1996, para. 7.3, and *Clarence Marshall v. Jamaica*, communication No. 730/1996, para. 6.6). Unfortunately, this criterion was not maintained in recent cases and this, in our view, represents a step backwards in the Committee's jurisprudence.⁶

6. In the interpretation of human rights law, and in the name of progress, an international body may amend a view it previously held and replace it with an interpretation that provides greater protection for the rights contained in an international instrument: this constitutes appropriate and necessary development of international human rights law.

7. The reverse procedure is not acceptable, however: it is not appropriate to interpret human rights provisions more restrictively than before. The victim of a violation of the Covenant deserves at least the same approach to protection as that provided in cases considered previously by the same body.

8. Consequently, and without wishing to minimize the steps taken by Uzbekistan in respect of the abolition of the death penalty, we are of the opinion that, in the Turaeva case, the Committee should also have found a violation of the right contained in article 6, paragraph 2, of the International Covenant on Civil and Political Rights.

(Signed) Ms. Christine Chanet

(Signed) Ms. Zonke Zanele Majodina

(Signed) Mr. Fabián Omar Salvioli

[Done in English, French and Spanish, the Spanish 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.]

⁶Human Rights Committee, communication No. 1378/2005, *Kasimov v. Uzbekistan*.