



**International covenant
on civil and
political rights**

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

DECISION

Communication No. 1240/2004

<u>Submitted by:</u>	S. A. (not represented by counsel)
<u>Alleged victim:</u>	The author's son, R. A.
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	6 January 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 16 January 2004 (not issued in document form)
<u>Date of adoption of decision:</u>	23 October 2009

* Made public by decision of the Human Rights Committee.

Subject matter: death sentence after an unfair trial with use of torture during investigation.

Procedural issues: level of substantiation of claim.

Substantive issue: forced confessions, bias of tribunals; presumption of innocence.

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

Article of the Covenant: 6; 7; 14, paragraph 1.

[ANNEX]

ANNEX

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE
OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS**

Ninety-seventh session

concerning

Communication No. 1240/2004**

Submitted by: S. A. (not represented by counsel)
Alleged victim: The author's son, Rakhmat R. A.
State party: Tajikistan
Date of communication: 6 January 2004 (initial submission)

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

Meeting on 23 October 2009,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The author of the communication is S. A., a Tajik national born in 1937. He claims that his son, R. A., also a Tajik born in 1983, who at the time of the submission of the communication was detained on death row¹, is a victim of violations of his rights under article 6, paragraphs 1 and 2; article 7; and article 14, paragraph 1, of the International Covenant on Civil and Political Rights. The author is unrepresented by counsel. The Optional Protocol entered into force for the State party on 4 April 1999.

1.2 When registering the communication on 16 January 2004, and pursuant to rule 92 of its rules of procedures, the Human Rights Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party not to carry out R. A.'s execution pending the consideration of his case. By Note Verbale of 4 May 2004, the State party

** The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Yuji Iwasawa, 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.

¹ Following a death sentence imposed on 13 August 2003 by the Supreme Court of Tajikistan.

informed the Committee that R. A. had been granted pardon, and his death sentence had been commuted to a long prison term².

The facts as submitted by the author

2.1 During a theft committed on 13 October 2001 in the premises of the company « Ora international » in Dushanbe, a guard was killed. On 14 October 2001, three individuals, including the author's son, were arrested in this connection and were informed that they were suspected of theft, robbery and murder.

2.2 According to the author, at the beginning of the investigation his son confessed his participation in the theft, but he denied any involvement in the murder of the guard. He had affirmed that he and his co-accused had only planned to commit the theft, and that the guard was killed by his two accomplices when he was in another part of the building. The police however, charged him with murder.

2.3 The author claims that the principle of presumption of innocence was violated in respect to his son. On 17 October 2002, the later was shown in a TV programme called "VKD soobshchaet" ("The Ministry of Internal Affairs informs"), as one of the three criminals, responsible for a murder and theft, that had been arrested. This was done without his son's consent, and, according to the author, was in violation of the Criminal Procedure Code.

2.4 The author further claims that during the preliminary investigation, his son was subjected to torture. While in the premises of the Frunze district department of the Ministry of Internal Affairs in Dushanbe, immediately after his arrest, his son was asked by the police officers to produce written confessions. He did so, and the police officers left the room. They returned shortly afterwards and started beating him. Later, they asked him to write new confessions. The author affirms that, as a result of the beatings, his son wrote down what the officers dictated to him.

2.5 Once the investigation was completed, the author's son and his lawyer were given the opportunity to examine the case file. According to the documents, the author's son was charged only with murder and theft. In court, however, when the presiding judge was reading the charges, it transpired that his son was also charged with a count of involvement of minors into criminal activities (article 165 of the Criminal Code of Tajikistan). Following an objection by the lawyer of R. A., the case was sent back for further investigation. Afterwards, the author's son was officially charged under this additional count.

2.6 The author contends that during the trial, the judges acted in a biased and unfair manner. Allegedly, they ignored some depositions of defence witnesses and the statements of the accused. For example, the two other co-accused repeated several times that the author's son was not present during the murder and did not participate in the beatings of the guard. The court ignored their statements and sentenced the author's son and one of his co-accused to death.

² From a subsequent submission by the State party, it transpires that R. A.'s death sentence was commuted to 25 years of imprisonment.

2.7 The lawyer of the author's son filed an appeal to the appeal body of the Supreme Court. On an unspecified date, the appeal body rejected his claim and confirmed the sentence.

The complaint

3. The author contends that the facts as presented, reveal a violation of his son's rights under article 7, as he was tortured in order to confess guilty; article 14, paragraph 1, as the court was partial and ignored certain witnesses' testimonies; and article 6, paragraphs 1 and 2, given that his son has been imposed a death sentence following a trial that did not meet the basic criteria of fairness.

State party's observations

4.1 The State party presented its observations on the merits of the communication, on 1 March 2006, in the form of two separate submissions prepared by the Supreme Court and the Office of the Prosecutor General of Tajikistan.

4.2 The Supreme Court recalls the facts of the case: the author's son entered in a preliminary agreement with one D. and one A., both then minors, to commit a theft of an important sum of money contained in the firm where he worked, "ORA International". In the morning of 13 October 2002, he and his accomplices went to the company's premises. There, the author's son suggested to the guard, S., to take a lunch break and proposed to replace him during his absence. When the guard left, the author's son and his accomplices entered the building and started cutting the company's safe with an electric device. Inside the safe, they found 6202 US dollars which the author's son divided among them. Following this, they decided to kill the guard in order to conceal the theft. When the guard returned, at around 1 p.m., the author's son caught him from behind, and A. struck him on the head using a metal tube. The guard fell, and D. continued to strike him on the head with the tube. The author's son and D. gave additional strokes. The guard died as a result of his injuries.

4.3 According to the Supreme Court, the guilt of the author's son was established not only by his confessions during the preliminary investigation, which were confirmed partly by him in court, but also by the depositions of his co-accused, the testimonies of several witnesses, reports on the examination of the crime scene, evidence seized, medical forensic expert's conclusions, biological expert's conclusions, as well as other evidence examined in court.

4.4 As to the author's claims in the present communication, the Supreme Court notes, first, in respect to confessions that were allegedly obtained under coercion during the preliminary investigation, that R. A. was interrogated on 19 October and 27 November 2002. On those two occasions, he fully admitted his involvement in the murder, in presence of his privately hired lawyers M. and U., in conditions that were excluding any form of coercion. The Supreme Court notes that neither the author's son nor his lawyers have ever complained throughout the investigation about the use of torture or other forms of inhuman or degrading treatment. Furthermore, the criminal case file does not contain any record in this respect.

4.5 The Supreme Court further rejects as groundless the author's allegations that the court was biased and ignored witnesses' testimonies. It contends that during the first meeting of the trial

court, six witnesses testified in court. Each testimony was given due legal assessment and served as basis to conclude that the accused was guilty.

4.6 As to the author's allegations in respect of the broadcast "The Ministry of Internal Affairs informs", the Supreme Court affirms that the fact that in a TV broadcast it was affirmed that the author's son was a criminal does not mean that he really was one. The author's son could only be recognised as a criminal by a court sentence.

4.7 As to the author's allegations that his son was not informed of his charges under article 165 of the Criminal Code, the Supreme Court affirms that the author's son was indeed charged under this provision on 27 November 2002, and this count was maintained following additional inquiries, on 28 June 2003.

4.8 The Supreme Court concludes that in light of the above, it does not believe that the rights of R. A. under the Covenant have been violated.

4.9 In its submission, the General Prosecution Office also recalls extensively the facts and the proceedings of the case. It contends that the criminal responsibility of the author's son was grounded. It also notes that neither the author's son nor his lawyers ever complained, during the investigation or in court, about any use of unlawful methods of investigation by officials. The legal qualification of the son of the acts committed by the author's son was correct. No violation of the criminal procedure legislation occurred during the examination of the case in court.

Author's comments on the State party's submission

5.1 The author presented his comments on the State party's submission on 6 July 2009. He reiterates that the investigators forced his son to confess guilt in the murder. According to him, in their replies, neither the Supreme Court nor the General Prosecutor's Office refute his claim that his son was forced to confess his guilt of the murder. Even if during the investigation his son confessed in the presence of a lawyer, his confessions were obtained while he was in custody, and the State party has not presented any evidence to show that his son was not subjected to coercion. According to the author, a State party to the Covenant has a responsibility to investigate acts of torture, but in the present case no thorough investigation took place. According to the author, the fact that neither his son nor his lawyer ever complained about torture does not mean that no torture did take place.

5.2 The author finally explains that during the TV broadcast of 17 October 2002, his son and his co-accused were not designated as suspects but as criminals who had committed murder and theft.

Additional observations by the State party

6. By Note verbale of 21 October 2009, the State party reiterated in detail its previous observations.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 The Committee notes, as required by article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

7.3 The Committee notes the author's claim that the investigators forced his son to confess his guilt in a murder, in violation of article 7 of the Covenant. The State party has denied these allegations as groundless, and pointed out that no such allegations were ever formulated by the author's son or by his defence lawyers during the preliminary investigation or in court. In the absence of any other pertinent information on file in this respect, including a description of the alleged acts of ill-treatment or torture and of those who allegedly inflicted them, or any medical records in this regard, and in absence of any explanation from the author as to why these allegations were not raised before the competent authorities at the time, the Committee concludes that this part of the communication is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 and article 5, paragraph 2 (b), of the Optional Protocol.

7.4 The author has also claimed, in general terms, violations of article 14, paragraph 1, as his son's trial allegedly comported a number of irregularities, the court failed to take into consideration a number of evidence and testimonies and refused to call a number of witnesses. The Committee notes that the State party has replied that no procedural violations of the rights of the author's son have occurred in the present case. It further notes that the author's allegations lack in precision and substantiation and tend to challenge mainly the manner in which the courts accepted and assessed evidence. The Committee reiterates its jurisprudence³ that it is generally for the courts of States parties to evaluate facts and evidence in a particular case, unless it can be demonstrated that the evaluation was clearly arbitrary or amounted to a denial of justice. In the absence of any other pertinent information on file in this respect, the Committee considers that these particular allegations have been insufficiently substantiated, for purposes of admissibility, and, accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.5 The author has also alleged that his son's presumption of innocence was violated, as he was portrayed as a criminal in a TV broadcast, guilty of theft and murder. The Committee notes that nothing in the case file suggests that this allegation was ever raised in court. In the circumstances, and in the absence of any other pertinent information on file, the Committee decides that this part of the communication is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 and article 5, paragraph 2 (b), of the Optional Protocol.

³ Communication No. 541/1993, *Errol Simms* v. Jamaica, inadmissibility decision of 3 April 1995, paragraph 6.2.

7.6 In light of the above findings, the Committee does not consider it necessary to examine separately the author's remaining allegations under article 6 of the Covenant.

8. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 5, paragraph 2 (b), of the Optional Protocol;

(b) That the present decision shall be communicated to the State party and to the author.

[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.]
