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International Covenant on Civil and Political Rights

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Views

Communication No. 1206/2003

Submitted by:	T. M. and Z. I. (not represented by counsel)
Alleged victims:	R. M. and S. I., the authors' sons
State party:	Uzbekistan
Date of the communication:	13 October 2003 (initial submission)
Documentation references:	- Special Rapporteur's rule 92 decision, transmitted to the State party on 13 October 2003 (not issued in document form) - CCPR/C/87/D/1206/2003 – Decision on admissibility, adopted on 6 July 2006
Date of adoption of Views:	10 March 2010

* Made public by decision of the Human Rights Committee.

Subject matter:	Imposition of death penalty after unfair trial.
Substantive issues:	Right to life; fair hearing; right to be presumed innocent.
Procedural issue:	Non-substantiation of claims
Articles of the Covenant:	Articles 6, paragraphs 1 and 4; article 7; article 9; article 10; article 14, paragraphs 1, 2 and 3; article 16
Article of the Optional Protocol:	2

On 10 March 2010, 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. 1206/2003.

[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-eighth session)

concerning

Communication No. 1206/2003**

Submitted by:	T. M. and Z. I. (not represented by counsel)
Alleged victims:	R. M. and S. I., the authors' sons
State party:	Uzbekistan
Date of the communication:	13 October 2003 (initial submission)
Date of Admissibility decision:	6 July 2006

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

Meeting on 10 March 2010,

Having concluded its consideration of communication No. 1206/2003, submitted to the Human Rights Committee on behalf of R. M. and S. I. 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 authors of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the communication are T. M. and Z. I., both citizens of Uzbekistan. They submit the communication on behalf of their sons, respectively, R. M. and S. I., also Uzbek citizens, both born in 1979, who at the time of submission of the communication were detained on death row in Tashkent. They claim that their sons are victims of violations by Uzbekistan of article 6, paragraphs 1 and 4; article 7; article 9; article 10; article 14, paragraphs 1, 2 and 3; and article 16 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 28 September 1995. The authors are unrepresented.

** 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. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

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 13 October 2003, not to carry out the executions of the authors' sons, so as to enable the Committee to examine their complaint. By note of 30 October 2003, the State party informed the Committee that it would accede to the request for interim measures. On 1 May 2009, following the Committee's request for an update on the status of R. M. and S. I.'s death sentences after the abolition of the death penalty in Uzbekistan as of 1 January 2008, the State party forwarded information to the effect that on 29 January 2008, the Supreme Court of Uzbekistan had commuted their respective death sentences to 25 years' imprisonment.

The facts as presented by the authors

2.1 On 30 June 2003, the authors' sons were convicted by the Tashkent City Court of the premeditated murder under aggravated circumstances and robbery of two individuals, and were sentenced to death. R. M. and S. I. confessed to having killed the victims in the course of a fight, provoked by the victims' aggressive actions. They claimed, however, that they had not intended to kill them, did not steal from them and that they had duly reported the crime to the police. During the course of the investigation, both men were psychologically and physically coerced into confessing guilt on all of the charges. The Court refused to take any mitigating factors into account and sentenced them to death. The authors submit that during the trial, the court did not act objectively and took the side of the prosecution.

2.2 On 1 August 2003, an Appeal Chamber of the Tashkent City Court revised the sentence by withdrawing certain charges which it considered were unfounded, but upheld the death sentence. On 25 September 2003, the Judicial Chamber for Criminal Cases of the Supreme Court further revised the sentence by withdrawing a number of other charges but also upheld the death sentence.

The complaint

3. The authors claim that their sons' trial and ill-treatment in custody give rise to violations of articles 6, paragraphs 1 and 4; article 7; article 9; article 10; article 14, paragraphs 1, 2 and 3; and article 16 of the Covenant.

The State party's observations on admissibility and merits

4.1 By Note Verbale dated 30 October 2003, the State party stated that R. M. and S. I. were found guilty of having committed a robbery, combined with the premeditated murder of a married couple in their apartment and attempted premeditated murder of two other persons, including a minor, in the evening of 22 December 2002. The Tashkent City Court found that, having armed themselves with knives, their intent was to murder the couple. Following the murders, the authors' sons tried to cover their tracks by turning on a gas stove and leaving a burning cigarette in the apartment.

4.2 The State party submitted that R. M.'s and S. I.'s guilt was proven beyond doubt by the case evidence and that the death sentences were justified and proportionate to the crime committed.

Authors' comments on the State party's observations

5.1 In their comments on the State party's observations dated 19 March 2004 (for T. M.) and 7 December 2005 (for Z. I.), the authors contended that their sons' death sentences were cruel and unfounded. They added that they had not received a fair trial because the

Tashkent City Court and the appeal instances committed serious violations of domestic criminal and criminal procedure law.

5.2 The authors claimed that a number of charges against their sons should have been withdrawn, including murder with the intent to profit and to rob, concealing a crime and murder with particular cruelty. The authors stated, inter alia, that under article 97 of the Criminal Code, aggravating circumstances "with particular cruelty" could only be found where the accused had subjected the victim to torture or committed a wantonly cruel act; there was no allegation that this was so in the present case.

5.3 The authors submitted that under the Resolution of the Supreme Court No.40, "On judicial practices related to the cases of premeditated murder" (20 December 1996), where several persons were charged with a crime, the court must examine the character and degree of participation of each of the accused. In the present case, the courts did not establish who actually committed the murder. According to the authors, the investigation materials and the court proceedings demonstrate that neither R. M. nor S. I. had premeditated the murders. Moreover, according to the Resolution of Plenum of the Supreme Court "On court judgment", where a crime is committed by a group of people or with prior agreement between them, the court must establish precisely the role played by each of the accomplices. In the present case, this was not done.

5.4 According to the authors, the courts have not taken into account the fact that the deaths occurred in the context of an argument over a debt. Allegedly, the victims had refused to pay back an overdue debt to R. M., as a result of which the victims themselves provoked a fight.

5.5 The authors added that their sons' presumption of innocence was violated because their guilt was not proven according to law. Moreover, contrary to article 56 the Criminal Code[1], aggravating circumstances were taken into account twice – as elements of the crime and in determining the punishment, while mitigating circumstances were altogether ignored by the courts.

5.6 Lastly, the authors submitted that according to Resolution No. 40 of the Supreme Court, a death sentence is the exceptional punishment for premeditated murder under aggravated circumstances. Article 97 of the Criminal Code envisaged imprisonment for 15 to 20 years as an alternative to the death penalty, while article 7 stipulated that a stricter sentence shall be imposed only if the purposes of punishment could not be achieved through imposition of a lesser punishment envisaged for a crime. Therefore, in the authors' view the law allows, rather than mandates, the imposition of the death penalty.

5.7 Appeals for Presidential pardon were submitted by T. M. on behalf of R. M. on 28 October 2003 and by Z. I. on behalf of S. I. on an unspecified date. Negative replies to the requests for reconsideration of S. I.'s death sentence were received from the Supreme Court on 27 December 2003, 16 January, 31 March and 2 August 2004 and on 30 June 2005. No further information on the outcome of the appeal on behalf of R. M. has been provided by T. M..

Decision on admissibility

6.1 During its eighty-seventh session on 6 July 2006, the Committee considered the admissibility of the communication. It noted that in their initial submission of 13 October 2003, the authors alleged that their sons had been psychologically and physically coerced,

[1] Article 56 of the Criminal Code (Aggravated Circumstances): […] Aggravated circumstance stipulated in a relevant article of the Special Part of the Criminal Code as an element of that crime cannot be taken into account in determining the punishment.

during the investigation, into confessing their guilt on all of the charges against them. However, no information in substantiation of this claim had been adduced. In the circumstances, the Committee considered that the authors had failed sufficiently to substantiate the claim under article 7, for purposes of admissibility, and found this claim inadmissible under article 2 of the Optional Protocol.

6.2 The Committee further observed that the authors' claims under article 9 and article 10 had not been properly substantiated, as there was no information on file which suggested that the authors' sons had been subjected to arbitrary arrest or detention or that they had been treated inhumanly or without respect for their inherent dignity in detention. The Committee also noted that nothing was available in the file to suggest that the authors' sons had been denied recognition as persons before the law within the meaning of article 16. Accordingly, the Committee found the authors' claims under article 9, article 10 and article 16 insufficiently substantiated, and thus inadmissible under article 2 of the Optional Protocol.

6.3 The Committee considered that the facts as submitted by the authors appeared to raise issues under article 14, paragraphs 1, 2 and 3, of the Covenant, and that the authors' claims in respect of these provisions should be examined by the Committee on their merits. Since the authors' claim under article 14 that their sons were sentenced to death after an unfair trial was declared admissible, so was the claim of a violation of article 6.

6.4 To enable the Committee to make an informed decision on the merits of the communication, the Committee also decided that the State party should be reminded of its obligation under article 4, paragraph 2, of the Optional Protocol, to examine in good faith all allegations brought against it and to provide the Committee with all relevant information at its disposal. In particular, the State party was requested to provide copies of the trial transcripts of the Tashkent City Court that convicted the authors' sons on 30 June 2003 and of the Appeal Chamber of the Tashkent City Court that upheld this conviction on 1 August 2003, as well as a copy of the ruling of the Appeal Chamber of the Tashkent City Court of 1 August 2003. In turn, the authors were requested to provide copies of their sons' complaints on appeal and of any other petition submitted to the State party's authorities, pertinent to their claims under article 14 and article 6 of the Covenant.

State party's observations on the merits

7.1 On 12 October 2006, the State party submitted its observations on the merits, without however providing any of the court documents requested of it in the Committee's decision on admissibility. The State party stated that the Committee's decision on admissibility was examined by the Supreme Court of Uzbekistan, which concluded that no violations of the criminal or criminal procedure law had taken place during the investigation and court examination of R. M. and S. I.'s criminal case.

7.2 The allegations about the "use of unlawful methods" to extract confessions on all charges from R. M. and S. I., and information from witnesses in the course of pre-trial investigation and trial were not confirmed by the Supreme Court. Both alleged victims were "provided with a right to defence from the outset of their detention", all interrogations, legal proceedings and court hearings were conducted in the presence of their lawyers.

7.3 According to the State party, under article 509 of the Criminal Procedure Code, the original decision of the second instance's court shall be signed by all of the judges who take part in the examination of the case and shall be added to a defendant's criminal case file. A convict and the other parties to the proceedings shall be provided with a certified copy of the decision, which may omit the signatures of the judges involved.

7.4 Finally, the State party reiterated that the domestic courts correctly assessed the legal qualification of the crimes committed by R. M. and S. I., and that the punishment was proportionate to the crime committed.

7.5 By Notes Verbales of 17 October 2006 and 16 February 2009, the State party was reminded of the Committee's request to provide court documents indicated in its decision on admissibility. 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, copies of the court documents requested by the Committee could not be made available to it.

Absence of the authors' comments on the merits

8. By letters of 17 October 2006, 16 February 2009, 5 May 2009 and 19 October 2009, the authors were requested to submit their comments on the State party's observations on the merits and reminded of the Committee's request to provide court documents indicated in its decision on admissibility. The Committee notes that this information has not been received.

Consideration of the merits

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

9.2 The Committee notes the authors' allegations, raising issues under article 14, paragraphs 1, 2 and 3, of the Covenant, that their sons' trial was unfair, their right to be presumed innocent was violated and that the court failed to establish the character and degree of participation of each of the accused in the murders. It observes that these allegations relate primarily to the evaluation of facts and evidence by the State party's courts. It recalls[2] that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice. The Committee further notes the State party's contention that article 475 of its Criminal Procedure Code prevents it from supplying court documents as requested in the Committee's admissibility decision. While the Committee regrets the State party's failure to provide this information and reiterates its obligation under article 4, paragraph 2, of the Optional Protocol, to provide the Committee with all relevant information at its disposal, it notes, at the same time, that the authors themselves have not provided the information requested from them despite four reminders sent in 2006 and 2009. Indeed, the authors have provided no response at all to the Committee's admissibility decision or to the State party's observations. Accordingly, and in absence of any further pertinent information which would enable it to verify whether the trial in fact suffered from the defects alleged, the Committee can find no basis for a conclusion of a violation of article 14, paragraphs 1, 2 and 3, of the Covenant.

9.3 Finally, as to the authors' claim under article 6 of the Covenant, the Committee notes that on 29 January 2008, the Supreme Court of Uzbekistan commuted both R. M.'s and S. I.'s death sentences to 25 years' imprisonment. In light of this, and absent any findings of violations of article 14 in the present case, the Committee concludes that the facts before it do not reveal a violation of article 6, of the Covenant.

[2] See, inter alia, Communication No. 541/1993, Errol Simms v. Jamaica, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

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 do not disclose a violation of any of the provisions of the International Covenant on Civil and Political Rights.

[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.]