



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Ninety-ninth session**

12 to 30 July 2010

**Views**

**Communication No. 1225/2003**

<u>Submitted by:</u>	Olimzhon Eshonov (not represented by counsel)
<u>Alleged victims:</u>	The author and his deceased son, Orif Eshonov
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	8 September 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's Rule 97 decision, transmitted to the State party on 27 November 2003 (not issued in document form)
<u>Date of adoption of Views:</u>	22 July 2010

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\* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Suspicious death in custody allegedly resulting from torture
<i>Substantive issues:</i>	Right to life; torture, cruel, inhuman or degrading treatment or punishment; effective remedy
<i>Procedural issue:</i>	Non-substantiation of claims
<i>Articles of the Covenant:</i>	6, paragraph 1, alone and read in conjunction with 2; 7, alone and read in conjunction with 2
<i>Article of the Optional Protocol:</i>	2

On 22 July 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. 1225/2003.

[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-ninth session)**

concerning

**Communication No. 1225/2003\*\***

Submitted by: Olimzhon Eshonov (not represented by counsel)  
Alleged victims: The author and his deceased son, Orif Eshonov  
State party: Uzbekistan  
Date of communications: 8 September 2003 (initial submission)

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

Meeting on 22 July 2010,

Having concluded its consideration of communication No. 1225/2003, submitted to the Human Rights Committee by Mr. Olimzhon Eshonov in his own name and on behalf of Mr. Orif Eshonov 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, Mr. Olimzhon Eshonov, an Uzbek national born in 1932, is the father of Mr. Orif Eshonov, also an Uzbek national, born in 1965, who died in custody presumably on 15 May 2003. The author acts on his own behalf and on behalf of his son, and claims a violation by Uzbekistan of his son's rights and of his own rights under article 2 and article 7 of the International Covenant on Civil and Political Rights. The communication also appears to raise issues under article 6, paragraph 1, alone and read in conjunction with article 2, of the Covenant, with regard to the author's son. The author is unrepresented. The Optional Protocol entered into force for the State party on 28 December 1995.

1.2 On 22 January 2004, the State party requested the Committee to examine the admissibility of the communication separately from its merits, in accordance with rule 97,

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Mr. Mahjoub El Haiba, 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, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

paragraph 3, of the Committee's rules of procedure. On 11 February 2004, the Special Rapporteur on new communications and interim measures decided, on behalf of the Committee, to examine the admissibility of the communication together with the merits.

#### **The facts as presented by the author**

2.1 On 6 May 2003, the author's son was arrested by officers of the National Security Service, allegedly while distributing Hizb ut-Tahrir leaflets, and detained in the Department of Internal Affairs of Karshi City. On the same day, the Department of the National Security Service of the Kashkadarya Region instituted criminal proceedings against the author's son and seven other individuals under article 159, part 1, of the Criminal Code (attempt to overthrow the constitutional order of the Republic of Uzbekistan). Contrary to the requirements of article 217 of the Criminal Procedure Code, the author was not informed about his son's arrest within 24 hours.<sup>1</sup> On 16 May 2003, the author was advised that his son had died and his body was returned to the family for burial. On 17 May 2003, the author's son was buried in his hometown of Yangiyul in the presence of approximately 30 law-enforcement officers.

2.2 According to the results of the expert examination conducted by the Forensic Medical Bureau of the Ministry of Health in the Kashkadarya Region, the author's son had died on 15 May 2003 in the resuscitation department of the Kashkadarya Regional Medical Centre. The author alleges, however, that according to the information available to him, his son had died on 10 May 2003 and his body was kept in the Medical Centre's morgue for four days.

2.3 The author submits to the Committee several post-mortem photographs of his son's body, taken by him after the body was returned to the family. He states that, as corroborated by the photographs, his son's body showed in addition to *livores mortis* extensive haematomas, large red spots, coagulated blood around his middle fingers on both hands, apparent swelling of both hands, numerous scratches and skin injuries. In addition, according to the official forensic medical report No. 45 of 30 May 2003 issued by the Forensic Medical Bureau of the Ministry of Health in the Kashkadarya Region, a total of 7 his ribs were broken: ribs Nos. 8 and 9 on the right side and ribs Nos. 6 to 11 on the left side of the body. He notes that neither the report of the post-mortem examination of 15 May 2003 nor the official forensic medical report No. 45 of 30 May 2003 document all visible injuries on his son's body.

2.4 On 20 May 2003, the author petitioned the Presidential Administration to conduct an investigation into his son's death. This petition was first transmitted to the General Prosecutor's Office and then to the Prosecutor's Office of the Kashkadarya Region. By a letter from the Prosecutor's Office of the Kashkadarya Region of 18 June 2003, the author was informed that the Prosecutor's Office of Karshi City conducted an investigation into his son's death and, on 31 May 2003, decided not to institute criminal proceeding on the basis of article 83, part 2, of the Criminal Procedure Code, for lack of *corpus delicti* in anyone's actions.

2.5 On 29 May 2003, the author petitioned the General Prosecutor to conduct an investigation into his son's death. By a letter from the General Prosecutor's Office of 30 June 2003, the author was informed that due to the deterioration of his son's health, he was

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<sup>1</sup> On 27 May 2003 the author received a letter of 6 May 2003 with a postal stamp of 19 May 2003, in which he was informed by the Head of the Investigation Department of the National Security Service of the Kashkadarya Region that his son was arrested on suspicion of having committed a crime. The author submits that the letter in question was back-dated and written after his petition to the Presidential Administration.

transferred on 13 May 2003 from the Department of Internal Affairs of Karshi City to the Kashkadarya Regional Medical Centre and died in the resuscitation department of the said Medical Centre on 15 May 2003, despite having been rendered medical assistance. According to the investigation conducted by the Prosecutor's Office of Karshi City and official forensic medical report, the death of the author's son was caused by hypertension, which resulted in brain haemorrhage. Internal rib fractures also detected on his son's body occurred ante-mortem due to a cardiac massage and are unrelated to his son's death. According to the doctors in charge of the case, rib fractures occurred as a result of a massage that also caused an outflow of blood into his soft tissues. A complex forensic examination was put in place in order to verify the doctors' arguments and to ascertain the cause of his son's death and the investigation into his case has been resumed.

2.6 On 23 June 2003, the author submitted yet another petition to the General Prosecutor with the request to initiate an investigation without further delay. By a letter from the Prosecutor's Office of the Kashkadarya Region of 15 August 2003, the author was informed that on 11 June 2003, the Prosecutor's Office of the Kashkadarya Region revoked the decision of the Prosecutor's Office of Karshi City of 31 May 2003 not to institute criminal proceeding and referred the case back to the Prosecutor's Office of Karshi City for a supplementary investigation. The investigation established on the basis of the report of the complex forensic examination that the author's son suffered from hypertension of the third degree, chronic pyelonephritis, chronic lung inflammation and chronic anaemia. These illnesses were detected in the Kashkadarya Regional Medical Centre in a timely manner and appropriate and sufficient medical assistance was rendered to the author's son. A brain haemorrhage and an acute infection of the blood in the deceased's brain resulted in a cerebral swelling and coma, aggravated by his other chronic illnesses. Therefore, his life could not be saved, despite the rendering of professional medical assistance. On 4 August 2008, the Prosecutor's Office of Karshi City again decided not to institute criminal proceedings on the basis of article 83, part 2, of the Criminal Procedure Code. On the same day, this decision was confirmed by the Prosecutor's Office of the Kashkadarya Region.

2.7 The author submits that according to the official forensic medical report No. 45 of 30 May 2003, prior to being transferred from the Department of Internal Affairs of Karshi City to the Kashkadarya Regional Medical Centre on 13 May 2003, medical assistance was rendered to his son on several occasions between 10 and 13 May 2003. In particular, on 10 May 2003, urgent medical assistance was given to his son in the premises of the Department of Internal Affairs of Karshi City, and on 11 May 2003, urgent medical assistance was also provided in the premises of the Department of Internal Affairs of Karshi City and then in the Kashkadarya Regional Medical Centre. On 12 May 2003, the author's son was transported back to the Department of Internal Affairs of Karshi City. On 13 May 2003, urgent medical assistance was again given in the premises of the Department of Internal Affairs of Karshi City and then in the Kashkadarya Regional Medical Centre. The author submits that given his son's grave medical condition which was clear to medical personnel, the way in which medical assistance was provided to his son in itself constituted a form of torture. The author draws the Committee's attention to the fact that already on 11 May 2003, his son had undergone an X-ray examination of his chest, with a note in the X-ray report that "no rib fractures have been detected". On 13 May 2003, he had undergone a further X-ray examination of the skull, with a note in the X-ray report that "no signs of a skull fracture have been detected". He claims that these notes in the above X-ray reports were an attempt by the State party's authorities to conceal the fractures that had already existed at that time.

2.8 The author submits that prior to being arrested by officers of the National Security Service on 6 May 2003, his son had not suffered from any chronic illnesses. In support of this claim he provides a copy of the medical certificate (undated) issued by the Yangiyul City Adult Outpatient Department in response to the request of 18 June 2003 sent on the

author's behalf by the Legal Aid Society. The medical certificate states that the author's son had not consulted the Yangiyul City Adult Outpatient Department for treatment and had not been registered for any regular medical check-ups.

2.9 The author provides a copy of the Human Rights Watch Briefing Paper of 4 April 2003 "Death in custody in Uzbekistan" describing six suspicious deaths in custody allegedly resulting from torture. He submits that his son's death is part of the State party's practice of total impunity for law-enforcement officers implicated in torture, which also shows a tendency aimed at spreading fear among individuals practising Islam outside of government control.

### **The complaint**

3.1 The author submits that his son's death resulted from torture to which he was subjected by law-enforcement officers in the course of interrogations and the inadequate investigation conducted by the State party's authorities is an attempt to conceal the crimes committed by its agents. He claims, therefore, that the State party violated his and his son's rights under article 7 of the Covenant.

3.2 The author claims that according to article 329 of the Criminal Procedure Code, a decision on whether or not to institute criminal proceedings should be taken within no later than 10 days. In his case, these procedural deadlines have not been complied with by law-enforcement officers, which in turn, resulted in a violation of his right under article 2 of the Covenant to have an effective and enforceable remedy.

3.3 Although the author does not specifically invoke this article, his claim in relation to his son's death as a result of torture appears to also raise issues under article 6, paragraph 1, alone and read in conjunction with article 2, of the Covenant, in his son's respect.

### **State party's observations on admissibility and merits**

4.1 On 15 December 2003, the State party submitted that the author's son was arrested on 6 May 2003 on suspicion of having committed a crime under article 159, part 1, of the Criminal Code, and was placed in custody on 9 May 2003. While being interrogated in the presence of a lawyer, the author's son did not deny that he was distributing leaflets and, when explicitly asked by the Deputy Prosecutor of the Kashkadarya Region on 9 May 2003, explained that he had not been subjected to unlawful methods after his arrest. According to the State party, this testimony of the author's son was duly documented in the interrogation report.

4.2 On 10, 11 and 13 May 2003, the author's son, who was detained at that time in a temporary confinement ward (IVS) of the Department of Internal Affairs of Karshi City, suffered from a sharp increase in blood pressure and had to be hospitalized in the Kashkadarya Regional Medical Centre. He was diagnosed with hypertension of the second degree, hypertonic crisis of the first degree, a severe form of pulmonary asthma, chronic renal insufficiency, a severe form of anaemia, chronic bronchitis and pneumonia. The author's son died in the said medical institution on 15 May 2003, despite having been rendered medical assistance.

4.3 According to the forensic medical report, mandated by the Prosecutor's Office of Karshi City, the death of the author's son was caused by hypertension, which resulted in the abnormal cerebral blood circulation and a brain haemorrhage. No signs of bodily injury were detected. The conclusions of the forensic medical examination have been confirmed by doctors who treated the author's son and by other materials. Officers of the Department of the National Security Service of the Kashkadarya Region and of the Department of Internal Affairs of Karshi City were subjected to investigation, respectively, by the National Security Service and the Department of Internal Affairs of the Kashkadarya Region, with

the conclusion that no illegal acts had been committed by any of the law-enforcement officers. For this reason, on 31 May 2003, the Prosecutor's Office of Karshi City decided not to institute criminal proceedings in this case. On 11 June 2003, this decision was revoked by the Prosecutor's Office of the Kashkadarya Region and the investigation is currently ongoing.

4.4 On 22 January 2004, the State party challenged the admissibility of the communication, arguing that the author failed to substantiate his claims under article 2 and article 7 of the Covenant. It submitted that on the basis of the author's petition, the General Prosecutor's Office had revoked the decision of the Prosecutor's Office of the Kashkadarya Region and, on 9 September 2003, ordered a new investigation and a complex forensic examination. In his petition to the General Prosecutor's Office, the author had primarily requested the exhumation of his son's body to carry out additional medical examinations. A special forensic medical commission consisting of "distinguished and experienced experts" conducted a thorough examination of the medical materials and concluded that there was no need to exhume the body of the author's son. Therefore, on 30 September 2003, the Prosecutor's Office of the Kashkadarya Region again decided not to institute a criminal proceeding in this case. On an unspecified date, this decision was confirmed by the General Prosecutor's Office.

4.5 The State party also submits that the author provided misleading information as to the context of article 329 of the Criminal Procedure Code (see para. 3.2 above) and argues that, according to the above-mentioned article, criminal proceedings are instituted only if there are sufficient grounds for that. The State party further claims that the revocation of the decision of the Prosecutor's Office of the Kashkadarya Region by the General Prosecutor's Office is an example of effective application of article 329 of the Criminal Procedure Code, which per se was put in place to ensure legal protection of individuals.

4.6 As to the author's claims under article 7 of the Covenant, the State party refers to the forensic medical report, testimony of the author's son and those of his cellmates, in support of its argument that the author's son had never been subjected to torture and other inhuman treatment by law-enforcement officers and medical personnel. The State party also argues that the author's allegation with regard to the impunity of law-enforcement officials as a violation of article 7 of the Covenant is incorrect, as well as his reference to the death of other individuals in custody, since the Committee's complaint procedure does not cover the alleged cases of mass violation of human rights. It adds that in 2001-2002, several law-enforcement officers were found guilty of subjecting detainees to inhuman treatment which resulted in their death, and sentenced to long terms of imprisonment. In August 2003, article 235 of the Criminal Code was amended with the aim of explicitly prohibiting torture and inhuman treatment and making it punishable by severe penalties; these amendments came into effect in September 2003.

4.7 On the facts, the State party reiterates the conclusions of the forensic medical report that internal fractures of seven ribs detected on the deceased's body were a result of a life-saving cardiac massage and were unrelated to his death. The State party adds that according to the testimony of an officer who was on duty in the IVS of the Department of Internal Affairs of Karshi City on 6 May 2003 (name is available on file), the author's son, who had initially introduced himself as Mr. Akmal Khakimov, was detained in the same cell with two other individuals. This officer has further testified that no force was used against the author's son and that, on 11 May 2003, he was taken to the hospital "as he got hydrophobia". This testimony was confirmed by the other four officers of the IVS of the Department of Internal Affairs of Karshi City (names are available on file). Six individuals who were detained in the same cell with the author's son have either written explanatory letters or given testimonies, attesting to the fact that the author's son had not complained to

them about his health or about being subjected to torture and that he had no signs of bodily injuries.

#### **Author's comments on State party's observations**

5.1 On 5 and 20 April 2004, the author commented on the State party's observations. He submits that the State party's claims with regard to his son's numerous illnesses have not been corroborated by any evidence. He refers to the medical certificate issued by the Yangiyul City Adult Outpatient Department (see para. 2.8 above) and explains that in Uzbekistan, all individuals suffering from hypertension and asthma, especially severe forms, are registered and subjected to regular medical check-ups. Therefore, if his son had indeed suffered from these illnesses, there would have been ample medical documentation for the State party to submit in support of its claims.

5.2 The author reiterates his initial claim that, as corroborated by photographs submitted to the Committee, numerous injuries on his son's body are inconsistent with the explanations advanced by the State party's authorities. In particular, he submits that typically a cardiac massage is performed in the heart area (ribs Nos. 3 and 4), whereas all seven broken ribs in his son's body were situated much lower than the heart area and could have been inflicted by blows. Swelling of the hands could have been a result of forcing hard objects, presumably steel needles, under his nails. The author claims that prior to the burial, he noticed that bodily tissues under his son's nails were damaged. Furthermore, the author suspects that some of his son's organs, in particular his brain, might have been removed from his body in order to conceal traces of being hit in the head. The author insists on the exhumation of his son's body in order to have an objective confirmation of his allegations.

5.3 The author states that he does not trust the conclusions of those doctors who rendered the so-called medical assistance to his son nor of the "distinguished and experienced experts". He claims that it would have been simply impossible for an independent doctor or expert not to notice all the injuries on his son's body and concludes, therefore, that either the doctors and experts in question have not been independent from law-enforcement entities or pressure was exerted on them. He further adds that, according to the forensic medical report, his son was rendered urgent medical assistance on several occasions within just a few days and should not have been allowed by an independent doctor to be subjected to interrogations with such health conditions.

5.4 The author submits that his claim in relation to article 329 of the Criminal Procedure Code is based on the non-compliance by law-enforcement officers with the procedural deadlines for taking a decision on whether or not to institute criminal proceedings in relation to his son's death.

5.5 The author submits that written explanatory letters and testimonies of his son's cellmates referred to by the State party could have been obtained from them by law-enforcement officers either under pressure or in exchange for a decrease in the term of imprisonment or other privileges.

#### **Supplementary submissions**

6. On 19 December 2007, in addition to reiterating its earlier arguments, the State party submits that the deceased's illnesses were corroborated by the forensic medical report and that one cannot exclude that his son knew that he suffered from the illnesses in question and either had not registered for any regular medical check-ups or had registered in a medical institution other than the Yangiyul City Adult Outpatient Department. With regard to the author's claim that numerous injuries on his son's body were inconsistent with the explanations advanced by the State party, it submits that the conclusions of the initial

forensic medical examination have been confirmed by the report of the complex forensic examination No. 17-Com of 1 July 2003.

7. On 15 January 2008, the State party's submission of 19 December 2007 was forwarded to the author for comments. Reminders for comments were sent on 16 February 2009 and 29 September 2009. 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. In the absence of any objection by the State party, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met.

8.3 The State party contested the admissibility of the communication, arguing that the author has failed to substantiate his claims under article 2 and article 7 of the Covenant. The Committee considers, however, that the arguments advanced by the State party are closely linked to the merits of the communication and should be taken up when the merits of the communication are examined. The Committee considers that the author has sufficiently substantiated his claims, for purposes of admissibility, in that they appear to raise issues under article 2; article 6, paragraph 1; and article 7 of the Covenant, and declares them admissible.

#### *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 As to the author's claim in relation to the arbitrary deprivation of his son's life, the Committee recalls its general comment No. 6 (1982) on the right to life, which states that the right enshrined in this article is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation.<sup>2</sup> In this regard, the Committee considers that a death in any type of custody should be regarded as *prima facie* a summary or arbitrary execution, and there should be thorough, prompt and impartial investigation to confirm or rebut the presumption, especially when complaints by relatives or other reliable reports suggest unnatural death.<sup>3</sup>

9.3 The Committee notes that, in the present case, the author's son was arrested on 6 May 2003 by officers of the National Security Service and, as confirmed by the State party (see para. 4.7 above), he had not complained about his health that day. The author argues that his son was in good health prior to his detention and that he was not aware that he was suffering from an illness of any kind. Nine days later, that is, on 15 May 2003, he died in the Kashkadarya Regional Medical Centre. According to the official forensic medical

<sup>2</sup> *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40)*, annex V, para. 1.

<sup>3</sup> See Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Economic and Social Council resolution 1989/65, annex, para. 9.

report No. 45 of 30 May 2003, the author's son suffered from several chronic and life-threatening illnesses, inter alia, hypertension, a severe form of pulmonary asthma, a chronic renal insufficiency, a severe form of anaemia, chronic bronchitis and pneumonia, and died from hypertension, which resulted in the abnormality of cerebral blood circulation and a brain haemorrhage. The Committee further notes that the State party refers to the testimony of an officer of the IVS of the Department of Internal Affairs of Karshi City (see para. 4.7 above), according to which the author's son had to be hospitalized "as he got hydrophobia". The State party, however, has not provided any explanation as to what could have triggered a bout of hydrophobia in custody.

9.4 The Committee notes that a medical certificate provided by the author to the Committee attests to the claim that his son was not registered by the medical institution at his habitual place of residence for any regular medical check-ups in relation to any illness. Although the State party argued that a lack of such registration at the deceased's habitual place of residence is inconclusive, it has not provided any evidence that would suggest that he had indeed suffered from any of the above-mentioned illnesses prior to being taken into custody. In addition, the State party has not explained why the author was repeatedly returned to his place of detention from the Kashkadarya Regional Medical Centre, having, according to the State party's own medical reports, required urgent medical attention on several occasions within the space of only a few days. Given that the author's son ultimately died in the same Medical Centre, the Committee would have expected an investigation or at the very least an explanation from the State party of the reasons why he was continually released back into detention and why the author was not notified about his son's grave medical condition in time before his death.

9.5 The Committee notes that the author complained about a lack of impartiality and other inadequacies in the State party's investigation into his son's death and that he provided a detailed description of injuries on his son's body, suggesting that he had died from an unnatural death (see paras. 2.3 and 5.2 above). The Committee notes that the author's description of the injuries is corroborated either by photographic evidence submitted to the Committee or by the State party's own forensic medical reports. In particular, the reports attest to the fact that seven of the deceased's ribs were broken. The official investigations conducted by the Prosecutor's Office on three occasions resulted in a conclusion that there were no grounds to institute criminal proceedings in relation to the death of the author's son for lack of *corpus delicti* in anyone's actions.

9.6 In this regard, the Committee recalls that the burden of proof cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information.<sup>4</sup> 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 violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. The Committee observes that in cases in which the established investigative procedures are inadequate and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, States parties should pursue investigations through an independent commission of inquiry or similar procedure.<sup>5</sup> If the body of the deceased person has been buried and it later appears that an investigation is required, the body should be promptly and competently exhumed for an autopsy. The autopsy report must describe any and all injuries to the

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<sup>4</sup> Communications No. 30/1978, *Bleier v. Uruguay*, Views adopted on 24 March 1980, para. 13.3; No. 84/1981, *Dermitt Berbatol. v. Uruguay*, Views adopted on 21 October 1982, para. 9.6.

<sup>5</sup> See Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (note 3 above), para. 11.

deceased including any evidence of torture. Families of the deceased and their legal representatives should have access to all information relevant to the investigation, and should be entitled to present other evidence.<sup>6</sup>

9.7 The Committee observes that in the present case the arguments provided by the author point towards the State party's direct responsibility for his son's death by torture and, inter alia, necessitated at the very minimum a separate independent investigation of the potential involvement of the State party's law-enforcement officers in the torture and death of the author's son. The Committee considers, therefore, that the State party's failure to, inter alia, exhume the body of the author's son and to properly address any of the author's claims raised at the domestic level and in the context of the present communication about inconsistencies between injuries on his son's body and the explanations advanced by the State party's authorities, warrant the finding that there has been a violation<sup>7</sup> of article 6, paragraph 1, and article 7, of the Covenant, with regard to the author's son.

9.8 The author also claimed that his son's death resulted from torture to which he was subjected by law-enforcement officers in the course of interrogations and the inadequate investigation conducted by the State party's authorities is an attempt to conceal the crimes committed by its agents. These allegations were presented both to the State party's authorities and in the context of the present communication. 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.<sup>8</sup> Moreover, once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially.<sup>9</sup> Where investigations reveal violations of certain Covenant rights, States parties must ensure that those responsible are brought to justice.<sup>10</sup>

9.9 The Committee notes that, in addition to the above-mentioned official forensic medical report, the State party referred to the testimony of the author's son and those of his cellmates, in support of its argument that the author's son had never been subjected to torture and other inhuman treatment by law-enforcement officers and medical personnel. The State party, however, did not provide any information as to whether any inquiry was undertaken by the authorities both in the context of the criminal investigations or in the context of the present communication to address the detailed and specific allegations advanced by the author in a substantiated way. In these circumstances, due weight must be given to the author's allegations. The Committee considers, therefore, that the above factors, taken together, lead it to conclude that the State party's investigations into the highly suspicious circumstances of the death of the author's son in the State party's custody just nine days after his arrest by officers of the National Security Service, were inadequate, in the light of the State party's obligations under article 6, paragraph 1, and article 7, read in conjunction with article 2, of the Covenant. In the Committee's view, therefore, there has

<sup>6</sup> Ibid, paras. 12 – 13 and 16.

<sup>7</sup> See Communication No. 962/2001, *Mulezi v. Democratic Republic of the Congo*, Views adopted on 8 July 2004, para. 5.4.

<sup>8</sup> Communications No. 907/2000, *Siragev v. Uzbekistan*, Views adopted on 1 November 2005, para. 6.2; and No. 889/1999, *Zheikov v. Russian Federation*, Views adopted on 17 March 2006, para. 7.2.

<sup>9</sup> Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture and cruel treatment or punishment, *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40)*, annex VI, sect. A, para. 14.

<sup>10</sup> Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40, vol. I (A/59/40 (Vol. I))*, annex III, para. 18.

been a violation of article 6, paragraph 1, and article 7, read in conjunction with article 2, of the Covenant, with regard to the author's son.

9.10 The Committee further observes that although over seven years have elapsed since the death of the author's son, the author still does not know the exact circumstances surrounding it and the State party's authorities have not indicted, prosecuted or brought to justice anyone in connection with this custodial death in the highly suspicious circumstances. The Committee understands the continued anguish and mental stress caused to the author, as the father of a deceased detainee, by this persisting uncertainty amplified by the condition in which his son's body was returned to the family for burial, and considers that it amounts to inhuman treatment of the author, in violation of article 7 of the Covenant.

9.11 The Committee further finds that the persistent failure of the State party's authorities properly to investigate the circumstances of his son's death effectively denied the author a remedy.<sup>11</sup> The Committee considers that, taken together, the circumstances require the Committee to conclude that the author's rights under article 2, read in conjunction with article 7, of the Covenant, have also been violated.

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 by Uzbekistan of Mr. Orif Eshonov's rights under article 6, paragraph 1, and article 7, alone and read in conjunction with article 2, and of the author's rights under article 7; and under article 2, read in conjunction with article 7, of the Covenant.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy in the form, inter alia, of an impartial investigation into the circumstances of his son's death, prosecution of those responsible and 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 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.]

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<sup>11</sup> Communication No.1275/2004, *Umetaliev v. Kyrgyzstan*, Views adopted on 30 October 2008, para. 9.6.