



**International Covenant on
Civil and Political Rights**

Distr.: Restricted*
28 April 2011

Original: English

Human Rights Committee
One hundredth and first session
14 March - 1 April 2011

Views

Communication No. 1499/2006

<u>Submitted by:</u>	Temur Toshev (not represented by counsel)
<u>Alleged victims:</u>	The author's brother, Mukhammadruzi Iskandarov
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	11 April 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's Rule 97 decision, transmitted to the State party on 4 October 2006 (not issued in document form)
<u>Date of adoption of Views:</u>	30 March 2011

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Conviction to prison term after an unlawful detention in isolation, in the absence of a lawyer, forced confessions, and unfair trial.
<i>Substantive issues:</i>	Torture, cruel, inhuman or degrading treatment; arbitrary detention; habeas corpus; forced confessions; unfair trial.
<i>Procedural issue:</i>	None
<i>Articles of the Covenant:</i>	7; 9; 10; and 14
<i>Article of the Optional Protocol:</i>	2

On 30 March 2011, 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. 1499/2006.

[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 (one hundredth and first session)

Concerning

Communication No. 1499/2006**

Submitted by: Temur Toshev (not represented by counsel)
Alleged victim: The author's brother, Mukhammadruzi Iskandarov
State party: Tajikistan
Date of communication: 11 April 2006 (initial submission)

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

Meeting on 30 March 2011,

Having concluded its consideration of communication No. 1499/2006, submitted to the Human Rights Committee on behalf of Mr. Mukhammadruzi Iskandarov 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. The author of the communication is Mr. Temur Toshev, a Tajik national born in 1965, on behalf of his brother, Mr. Mukhammadruzi Iskandarov, also a Tajik national born in 1954, who, at the time of the initial submission was imprisoned in Dushanbe, Tajikistan. The author claims that his brother is a victim of violations, by Tajikistan, of his rights under article 7; article 9, paragraphs 1 and 3; article 14, paragraphs 1 and 3 (d), (e), and (g), of the International Covenant on Civil and Political Rights. Although the author does not invoke it specifically, the communication also appears to raise issues under article 14, paragraph 3 (b), of the Covenant. The author is unrepresented. The Covenant and the Optional Protocol entered into force in relation to Tajikistan on 4 April 1999.

** The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Iulia Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

The facts as presented by the author

2.1 Mr. Iskandarov was a member of the Democratic Party of Tajikistan since its establishment - no precise date is provided - and that he was the head of the party in one of the districts of Dushanbe from 1990 to 1992. In 1997, following the signature of the Peace Agreement by the Government and the United Tajik Opposition, Mr. Iskandarov became the Chairman of the State Committee on Extraordinary Situations and Civic Defence. He worked there from 1997 to 1999, and obtained the grade of "Major-General". In 1999, by Presidential Decree, he was appointed as Director-General of the State Enterprise "Tajikkommunservice", where he worked until 2001. From 2001 to November 2003, he was the Director-General of the State enterprise "Tajikgaz".

2.2 At the sixth Congress of the Democratic Party of Tajikistan, in September 2003, Mr. Iskandarov was elected as the party's leader. The eighth Congress of the Democratic Party of Tajikistan re-elected him as the party's leader, and it was planned that he would stand for President of Tajikistan in the 2006 elections. In February 2005, Mr. Iskandarov headed the party's list of candidates at the Parliamentary elections.

2.3 In the meantime, on 9 January 2003, a criminal case was initially opened against his brother, for unlawful possession of firearms. The case was subsequently closed, for lack of evidence. On 27 August 2004, the Prosecutor's Office of the Tadjikadad district of Dushanbe was attacked. Mr. Iskandarov was accused of having been one of the assailants, even if, according to the author, when the attack in question was committed, his brother was in the Russian Federation.

2.4 On 25 November 2004, the Office of the Prosecutor-General of Tajikistan charged Mr. Iskandarov in absentia for crimes such as terrorism, banditry, unlawful possession of firearms, and misappropriation of State property. On 26 November 2004, the Office of the Prosecutor-General ordered Mr. Iskandarov's arrest and issued an international arrest warrant. On this basis, Mr. Iskandarov was arrested, in the Russian Federation. His case was examined by the Babushkinsk Inter-district Prosecution Office of Moscow. The Prosecution Office rejected the Tajik request for extradition, and Mr. Iskandarov was released, on 4 April 2005.

2.5 On 15 April 2005, Mr. Iskandarov was unlawfully apprehended by unknown individuals in Moscow, and was kept in secret detention for two days. On 17 April 2005, he was unlawfully brought to Tajikistan by plane, and was immediately placed in custody at the Detention centre of the Ministry of Security in Dushanbe. He was kept there in isolation for ten days, and was provided only with bread and water during this period. He contracted a skin disease, but his requests for medical care were ignored, as were his requests to be represented by a lawyer.

2.6 On 26 April 2005, the Prosecutor-General announced, during a Press Conference, the recent arrest, in Tajikistan, of Mr. Iskandarov, and that was how his relatives became aware of his arrest. The following day, the family inquired about his whereabouts at the Ministry of Security, but was informed that he was not there, but that there was another individual detained, one Mr. R. S. The relatives asked for a food parcel to be given to Mr. R. S. and to be provided with a receipt to this effect signed by the detainee. The confirmation receipt they were provided with was signed by Mr. Iskandarov. On 28 April 2005, the family retained a private lawyer to represent Mr. Iskandarov, but the lawyer was not allowed to meet with his client. The lawyer complained immediately to the Office of the Prosecutor-General, but never received a reply.

2.7 On 28 April 2005, Mr. Iskandarov was interrogated, in the absence of a lawyer. The author explains that his brother signed a disclaimer prior to the interrogation, to the effect that he waived the right to be represented by a lawyer. During this interrogation, Mr. Iskandarov confessed guilt to all charges against him.

2.8 On 30 April 2005, he confirmed his confessions during his “official” interrogation as an accused, in the presence of his lawyer. The same day, the lawyers of Mr. Iskandarov announced at a press conference that their client had been unlawfully abducted in Russia, that he was kept at the Ministry of Security, and that his lawyers were unable to meet with him in private. According to the author, following that press conference, the lawyers began receiving threats.

2.9 While in detention at the Ministry of Security, Mr. Iskandarov was kept awake and interrogated every night. During the day, he was constantly questioned. Thus, he was not in his normal state, he was extremely weak, and could not react adequately. The administration of the Detention Centre refused to provide him with the medical products required for his skin disease, and only gave him sedatives. His lawyer complained to the Prosecutor’s Office and the administration of the Detention Centre demanding that the night interrogations be stopped and that delivery of adequate medication be authorised. As a result, the night interrogations stopped for few days but were resumed shortly afterwards.

2.10 During the preliminary investigation of his brother’s criminal case, the Supreme Court was examining the criminal cases of three other individuals suspected of having been Mr. Iskandarov’s accomplices and of having committed various crimes under his leadership. Mr. Iskandarov’s lawyers requested the Supreme Court to postpone the examination of these cases and to merge them with Mr. Iskandarov’s one as the facts were identical, but their request was ignored, and the cases were examined separately.

2.11 The preliminary investigation ended on 1 June 2005, and the lawyers of Mr. Iskandarov, after having studied the content of the case file, requested that the case be put on hold pending the formulation of their written comments. When they submitted their comments on 4 June 2005, however, the lawyers understood that the case had already been transmitted to the court.

2.12 Mr. Iskandarov’s criminal case was examined at first instance by the Criminal panel of the Supreme Court. When the trial started, Mr. Iskandarov retracted his initial confession and contended that it had been obtained under threats of physical reprisals, but the court ignored this. The lawyers complained on several occasions in court about the irregularities which had occurred during the preliminary investigation. In particular, they pointed out that Mr. Iskandarov was unlawfully apprehended in the Russian Federation and transferred to Tajikistan; that he was kept unlawfully at the premises of the Ministry of Security under another identity; that his lawyers were not allowed to see him in a timely manner; also that, later on, the lawyers were only able to meet with their client in the presence of officials; and that all their claims during the preliminary investigation were ignored. The court, however, rejected most of these claims, explaining that Mr. Iskandarov’s lawyers had been present every time when investigation acts were carried out.

2.13 One of the charges against the author’s brother related to the fact that he had hired his own private guards. According to the author, this was done with the explicit authorisation of the President of Tajikistan. In court, Mr. Iskandarov’s lawyers requested to have the President, the Minister of Security, the Prosecutor General, the Prosecutor of Dushanbe, the Prime Minister and other officials questioned. This request remained simply unaddressed by the court. The lawyers also asked to have questioned the officials who allegedly apprehended Mr. Iskandarov with a false Russian passport in Dushanbe, as well as other witnesses of the scene. The court, however, stated that as it had been unable to locate these individuals and that their interrogation was impossible.

2.14 On 5 October 2005, the court found Mr. Iskandarov guilty of several crimes and sentenced him to a prison term of 23 years, with the deprivation of his title of Major-General. On 18 January 2006, the Appeal panel of the Supreme Court upheld the sentence.

The complaint

3.1 The author claims that his brother's detention for ten days after his unlawful transfer from Russia, in complete isolation at the Ministry of Security, where he was provided only with bread and water, and without adequate medical care for the disease he contracted during that period of time, amounts to a violation of Mr. Iskandarov's rights under article 7 of the Covenant¹.

3.2 The author further claims that his brother's rights under article 9, paragraph 1, of the Covenant were violated, because Mr. Iskandarov was unlawfully apprehended and brought to Tajikistan, and was unlawfully detained, in isolation at the premises of the Ministry of Security for ten days.

3.3 According to the author, Mr. Iskandarov's rights under article 9, paragraph 3, of the Covenant were also violated, as the decision for his arrest and placement in custody was taken by a prosecutor, i.e. an organ which cannot be seen as having the necessary objectivity and impartiality in dealing with such matters.

3.4 The author further claims that his brother's rights under article 14, paragraph 1, were violated. According to him, the court was biased and acted in an accusatory manner, and several of the lawyers' requests were not given due consideration. In addition, a number of witnesses could not be questioned; the court ignored the fact that Mr. Iskandarov was kept unlawfully isolated at the premises of the Ministry of Security and confessed guilt under pressure, in the absence of a lawyer. Also, at the beginning of the trial, Mr. Iskandarov retracted his confession on the counts of terrorism, banditry, and illegal possession of fire-arms, explaining that initially, he had confessed guilt under threats of physical reprisals, but the court ignored his statements. Mr. Iskandarov and his defence lawyers could only examine the trial transcript forty-one days after his conviction. The defence's written objections to the content of the trial transcript were ignored by the appeal body of the Supreme Court.

3.5 The author further claims that his brother's rights under article 14, paragraph 3 (d), of the Covenant have been violated. In spite of the Constitutional provisions to the effect that all persons deprived of liberty have the right to be assisted by a lawyer, and in spite of Mr. Iskandarov's requests to this effect, he only was represented by a lawyer starting as of 30 April 2005, despite having been apprehended already on 17 April 2005 and interrogated in the meantime. Throughout the preliminary investigation, Mr. Iskandarov could only meet with his lawyers in the presence of law-enforcement officials, and his lawyers' complaints in this connection were ignored. Although the author has not invoked it specifically, the communication appears also to raise issues under article 14, paragraph 3 (b), of the Covenant.

3.6 The author claims that his brother's rights under article 14, paragraph 3 (e), of the Covenant were also violated, as the court failed to ensure the presence and the questioning of important witnesses which, according to the author, could have contributed to the establishment of the objective truth.

3.7 Finally, the author claims that his brother's rights under article 14, paragraph 3 (g), of the Covenant were violated, as during his unlawful stay at the premises of the Ministry of Security, Mr. Iskandarov was forced, with the use of threats of physical reprisals, to confess guilt to a number of crimes, and his complaints thereon were disregarded.

¹ The author quotes the Committee's General Comment No20 (44), on the prohibition against having detainees isolated, General comment No. 21, on incommunicado detention as factor which could facilitate torture; and on long detentions in isolation; and the Committee's decision in communication No. 458/1991, *Mukong v. Cameroon*, Views adopted on 21 July 1994.

State party's observations

4. By Notes Verbales of 4 October 2006, 21 November 2007, 26 February 2009, 23 February 2010, and 13 September 2010, the State party was requested to submit to the Committee information on the admissibility and the merits of the communication. The Committee notes that this information has still not been received. It regrets the State party's failure to provide any information with regard to the author's claims, and recalls² that it is implicit in the Optional Protocol that States parties make available to the Committee all information at their disposal. In the absence of any observations on the admissibility and merits of the communication from the State party, due weight must be given to the author's allegations, to the extent that these have been sufficiently substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained, as it is required to do 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 settlement³. Concerning the requirement of exhaustion of domestic remedies, the Committee has noted that according to the information submitted by the author, all available domestic remedies have been exhausted. 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 also been met.

5.3 The Committee has noted, first, the author's claims of a violation of his brother's rights under article 7, of the Covenant, in light of his detention, isolated, at the Ministry of Security. It also noted the author's claims as to the lack of medical care and the inadequate food his brother was provided with during this period of time. Accordingly, it declares this part of the communication admissible under article 7 of the Covenant.

5.4 The Committee has noted further the author's claim of a violation of his brother's rights under article 14, paragraph 3 (d), of the Covenant. It considers, that the author's claim in raises also issues under article 14, paragraph 3 (b), of the Covenant. Accordingly, it declares this part of the communication admissible under article 14, paragraph 3 (b) and (d), of the Covenant.

5.5 The Committee considers that the author's remaining claims have been sufficiently substantiated, for purposes of admissibility, and declares them admissible, as raising issues under article 9, paragraphs 1 and 3; and article 14, paragraphs 1 and 3 (e) and (g), of the Covenant.

² See, for example, *Khomidova v. Tajikistan*, communication No.1117/2002, Views adopted on 29 July 2004; *Khalilova v. Tajikistan*, communication No.973/2001, Views adopted on 30 March 2005; and *Aliboeva v. Tajikistan*, communication No.985/2001, Views adopted on 18 October 2005.

³ The Committee has noted that on 23 September 2010, the European Court of Human Rights rendered a judgment in relation to the author's arbitrary detention in the Russian Federation on 15 April 2005 and unlawful transfer to Tajikistan the next day, concluding that a violation of the author's rights had occurred, by the Russian Federation, under articles 3 («No one shall be subjected to torture or to inhuman or degrading treatment or punishment»), and 5, paragraph 1 («Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (a) ...»), of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Consideration of the merits

6.1 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.

6.2 The Committee has noted the author's claim that his brother has been subjected to inhuman and degrading treatment by the authorities, since after having been unlawfully apprehended in the Russian Federation, on 15 April 2005, and unlawfully transferred to Tajikistan on 17 April 2005, Mr. Iskandarov was kept in isolation at the Detention Centre of the Ministry of Security for ten days, until 30 April 2010. During this time, according to the author, his brother was provided insufficient food, and contracted a skin disease without being provided with any medical treatment. In the absence of any observations on these specific claims, the Committee considers that due weight must be given to the author's claims. Accordingly, the Committee concludes that in the circumstances of the present case, the facts as submitted disclose a violation of Mr. Iskandarov's rights under article 7 of the Covenant.

6.3 The author has also claimed that the rights to liberty and security of his brother were violated, as on 15 April 2005, his brother was unlawfully apprehended in the Russian Federation and illegally brought to Tajikistan two days later. The State party has not presented any information in this connection. The Committee notes, first, that the author does not impute direct responsibility for his unlawful arrest and transportation to Dushanbe to the Tajik authorities. In addition, it considers that the material on file does not allow it to assess, the extent to which the State party's authorities were involved in Mr. Iskandarov's apprehension in Moscow and transportation to Dushanbe.

6.4 The Committee considers that what remains undisputed, however, in light of the information on file, is the fact that the brother of the author was placed in complete isolation, for ten days, at the premises of the Ministry of Security of Tajikistan immediately after his arrival in Dushanbe on 17 April 2005, in the absence of a lawyer. The Committee recalls that deprivation of liberty is permissible only when it takes place on such grounds and in accordance with such procedure as are established by domestic law and when this is not arbitrary⁴. In the absence of any information by the State party to refute the author's specific allegations, and in the absence of any other pertinent information on file, the Committee considers that due weight must be given to this part of the author's allegations. Accordingly, it concludes that the facts as presented, amount to a violation of Mr. Iskandarov's rights under article 9, paragraph 1, of the Covenant.

6.5 The author has further claimed that, later on, the decision to have his brother officially arrested and placed in custody was taken by a prosecutor, i.e. an official who cannot be seen as having the necessary objectivity and impartiality, for purposes of article 9, paragraph 3. In the absence of any reply by the State party on this particular issue, the Committee decides that due weight must be given to the author's allegations. The Committee recalls⁵ that paragraph 3 of article 9 entitles a detained person charged with a criminal offence to judicial control of his/her detention, and that it is inherent in the proper exercise of judicial power that it be exercised by an authority which is independent,

⁴ See, for example, communications No. 1461/2006 & 1462/2006 & 1476/2006 & 1477/2006, *Zhakhongir Maksudov, Adil Rakhimov, Yakub Tashbaev and Rasuldzhon Pirmatov v. Kyrgyzstan*, Views adopted on 16 July 2008, paragraph 12.2.

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

objective and impartial in relation to the issues dealt with. In the circumstances of the present case, the Committee is not satisfied that the public prosecutor can be characterized as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3, and concludes, therefore, that there has been a violation of this provision.

6.6 The Committee has noted the author's claims that his brother's rights under article 14, paragraph 1, have been violated as the court was biased and acted in an accusatory manner, and that several of the lawyers' requests were not given due consideration. The author has also explained that the court has failed to ensure the presence and the questioning of important witnesses; the court also failed to take into consideration the fact that Mr. Iskandarov was kept unlawfully isolated at the premises of the Ministry of Security and confessed guilt under threats of physical reprisals there, in the absence of a lawyer, and that his complaints on this subject were disregarded. The author further claimed that at the beginning of the court trial, Mr. Iskandarov retracted his confession and explained that he had confessed guilt initially under threat of violence, but this was simply ignored; and that the lawyers' objections to the content of the trial transcript were disregarded on appeal. In the absence of any information from the State party refuting these detailed allegations, the Committee considers that due weight must be given to the author's claim. Accordingly, in the circumstances of the present case, the Committee concludes that the facts as presented amount to a violation of the author's brother's rights under article 14, paragraph 1, and 3 (e) and (g), of the Covenant.

6.7 The Committee has further noted the author's claim that despite the provisions in national law to the effect that all persons deprived of liberty have the right to be assisted by a lawyer, and in spite of Mr. Iskandarov's requests to this effect, the latter was only represented by a lawyer as of 30 April 2005, whereas his actual apprehension took place on 17 April 2005 and he was interrogated during this period, including as an accused, on 28 April 2005, and was forced to confess guilt to serious charges. The author has also explained that after the announcement made by Mr. Iskandarov's lawyers, on 30 April 2005, to the effect that the author's brother had been unlawfully arrested and forced to confess guilt, the lawyers started receiving threats (see paragraph 2.8 above). The Committee has also noted the author's claim that throughout the preliminary investigation, his brother could only meet with his lawyers in the presence of law-enforcement officials, and that their complaints on this subject were ignored. The Committee considers that in the absence of a reply by the State party on these allegations, due weight must be given to the author's allegations. It concludes that by denying the author's brother access to the legal counsel of his choice for thirteen days, and by conducting investigative acts with his participation during this period of time, including interrogating him as a person accused of very serious crimes, the State party has violated Mr. Iskandarov's rights under article 14, paragraph 3 (b) and (d), of the Covenant⁶.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, finds that the facts before it disclose violations of the rights of the author's brother under article 7; article 9, paragraphs 1 and 3; and article 14, paragraphs 1, and 3 (b), (d), (e), and (g), of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the brother of the author with an effective remedy, including

⁶ See, for example, *Paul Anthony Kelly v. Jamaica*, communication No. 537/1993, Views adopted on 15 February 1993, paragraph 9.2, and *Dimitry Gridin v. the Russian Federation*, communication No. 770/1997, Views adopted on 20 July 2000, paragraph 8.5.]

either Mr. Iskandarov's immediate release or a retrial with all the guarantees enshrined under the Covenant, and also including appropriate compensation. The State party is under an obligation to prevent similar violations in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, Tajikistan has recognised the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and 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, within one hundred eighty days, information from the State party about the measures taken to give effect to the Committee's Views. The State party is requested also to give wide publicity to the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
