



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2106/2011*^{*}, **

<i>Communication submitted by:</i>	Valentina Kashtanova and Gulnara Slukina (not represented by counsel)
<i>Alleged victims:</i>	The authors' son and nephew, V.S. and V.L.
<i>State party:</i>	Uzbekistan
<i>Date of communication:</i>	12 September 2011 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 30 September 2011 (not issued in a document form)
<i>Date of adoption of Views:</i>	28 October 2016
<i>Subject matter:</i>	Ill-treatment of minors accused of murder; criminal trial based on forced convictions
<i>Procedural issue:</i>	Admissibility — manifestly ill-founded
<i>Substantive issues:</i>	Torture; ill-treatment; fair trial; measures of protection as minors
<i>Articles of the Covenant:</i>	7, 10, 14 and 24
<i>Article of the Optional Protocol:</i>	2

1. The authors of the communication are Valentina Kashtanova, a national of the Russian Federation, and Gulnara Slukina, a national of Uzbekistan. The first author submits the communication on behalf of her son, V.S., and the second author submits the

* Adopted by the Committee at its 118th session (17 October-4 November 2016).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmet Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.



communication on behalf of her nephew, V.L. The alleged victims are Uzbek nationals, born on 6 October 1992 and 6 July 1993 respectively, who were serving prison sentences at the time of submission. The authors claim that their son and nephew are victims of violations by Uzbekistan of their rights under articles 7, 10 (1), 14 and 24 (1) of the Covenant. The authors are not represented by counsel. The Optional Protocol entered into force for Uzbekistan on 28 December 1995.

The facts as submitted by the authors

2.1 On 18 August 2008, V.S. and V.L., who were respectively 15 and 14 years old at the time, were attacked by their classmate, Vlasov, with a knife. A brief fight followed and V.S. and V.L. managed to get away from Vlasov. According to them, at the moment of their retreat Vlasov was alive and continued to threaten them. They described the events to their mother and aunt and went to the local police station to report the incident. Upon arrival they were immediately arrested and informed that they were suspected of committing the premeditated murder of Vlasov. They were questioned by the police in the absence of either parents or attorneys. The authors also provide information regarding the difficult personal circumstances of Vlasov.

2.2 On 19 August 2008, V.S. and V.L. were questioned as suspects in the Prosecutor's Office in Almalyk, Uzbekistan, again in the absence of attorneys or parents. On 20 August 2008, an attorney, Mr. B., was appointed to defend V.S. On 21 August 2008, V.S. and V.L. were charged with premeditated murder. On 22 August 2008, Mr. B. was appointed to defend V.L. as well. On 30 August 2008, however, Mr. B. informed the investigating officer (name on file) that he felt that there was a conflict of interest, since he was a relative of the murder victim and also in 2006 he had acted as defence attorney in another criminal case for Vlasov and V.S. Mr. B. therefore refused to represent V.S. The investigating officer failed to inform the parents of V.S. of this and permitted Mr. B. to continue representing V.L. Another attorney (name on file) was appointed to represent V.S. thereafter.

2.3 The authors submit that during the pretrial investigation, the investigating officer "tortured" V.S. and V.L. in order to force them to confess: they were repeatedly beaten, refused food, not given warm clothing and denied visits by their families. The authors were allowed to visit the boys only once, in November 2008, after the preliminary investigation had already been concluded. They found that the boys were still wearing summer clothes — T-shirts and shorts — while the temperature outside was -15°C and the cells were not heated. During an interrogation, the investigating officer broke the leg of V.S. and refused to provide medical assistance. The authors provide copies of complaints to various institutions regarding the treatment to which V.S. and V.L. were subjected, including complaints addressed to the National Security Service, dated 26 May 2009, and to the General Prosecutor's Office, dated 6 August 2009 and 26 January 2010, and a request for a supervisory review addressed to the President of the Supreme Court, dated 14 August 2009. V.S. received assistance only after he was transferred to a prison in Tashkent. The investigating officer did not allow the authors to access the case files, claiming that this was the role of the attorney. The authors also submit that the investigation, the prosecution and the courts systematically ignored all evidence in favour of the defendants and committed violations of the domestic criminal law and procedures.

2.4 On 25 December 2008, the Tashkent Regional Court convicted V.S. and V.L. of premeditated murder and sentenced them to eight years and six months' imprisonment. On 21 January 2009, the appellate instance of the same court confirmed the verdict, after a hearing which lasted only 10 minutes. The authors submit that, in violation of domestic legislation, the second instance court did not effectively review the case. The authors filed requests for a supervisory review of the verdict (on 6 August 2009 to the General

Prosecutor's Office and on 14 August and 16 October 2009 to the Supreme Court), but were unsuccessful.

2.5 On 4 June 2010, the authors filed a complaint against the investigating officer, attempting to initiate an investigation regarding the violations of the right to defence of V.S. and V.L. The resulting investigation concluded that the investigating officer had not committed any crime. However, another investigation initiated by the authors resulted in a criminal case against the two lawyers initially representing V.S. and V.L., during which Mr. B. admitted appropriating the money paid to him by the parents for the defence of V.S. and falsifying an appointment order in the name of a colleague. The criminal case against the two lawyers was terminated without a verdict on 30 September 2010 owing to an amnesty.¹ Based on the lawyer's confession, the Regional Prosecutor's Office recommended the reopening of the case with regard to V.S. Following that recommendation, on 14 June 2010 the General Prosecutor's Office requested a supervisory review of the case by the Supreme Court. Despite that, in a contradictory manner, in its request the General Prosecutor's Office stated that V.S.'s guilt had been established beyond doubt by the evidence in the file. On 22 July 2010, the Supreme Court returned the case for additional investigation, pointing out possible violations of the right to defence of the accused.

2.6 On 19 November 2010, following a retrial, the Tashkent Regional Court again sentenced V.S. for premeditated murder. The verdict briefly addresses the torture allegations, stating that the investigating officer, who appeared at the retrial as a witness, had denied torturing or ill-treating the accused and that a medical examination of V.S., conducted in November 2008, had not registered any traces of injuries to him. The first author submits that during the retrial only two witnesses were called and that they provided different testimonies from the ones given in 2008. She also submits that the verdict was predominantly based on the testimony of the investigating officer, whom she accuses of torturing her son to extract a confession and violating his right to defence. She further submits that the torture allegations were investigated and confirmed by the Ombudsman, but that the Court did not take those findings into consideration. On 22 December 2010, the appellate instance of the Tashkent Regional Court confirmed the verdict. The subsequent request for a supervisory review to the Supreme Court was rejected on 28 February 2011. The authors contend that all available and effective domestic remedies have been exhausted.

The complaint

3. The authors maintain that the pretrial investigation and the trial itself were conducted with important breaches of procedural norms and of the victims' constitutional and procedural rights. The authors maintain that the rights of V.S. and V.L. under articles 7, 10 (1), 14 and 24 (1) of the Covenant have been violated.

State party's observations on the merits

4.1 On 30 November 2011, the State party submitted that V.S. and V.L. had been arrested on murder charges on 21 August 2008 and detained on remand. They had been convicted under article 97, part 2 (p) of the Criminal Code for premeditated murder by a group of persons and sentenced to eight and a half years of imprisonment by the Tashkent Regional Court on 25 December 2008. The appellate instance of the Tashkent Regional Court confirmed the verdict upon appeal on 21 January 2009. Following a supervisory review initiated by the General Prosecutor's Office, on 22 July 2010, the Supreme Court revoked the court decisions against V.S. and returned the case for additional investigation

¹ The authors provide a copy of a decision of the Almalyk town court, dated 30 September 2010, deciding to terminate the proceedings against Mr. B. and another attorney on the occasion of an amnesty to mark the national independence day.

in relation to the violations of the right to defence of V.S. Following an additional investigation, he was convicted of the same charges and sentenced to the same term of imprisonment. The State party further reiterates the content of the verdict and lists the evidence based on which V.S. and V.L. were convicted.

4.2 The State party notes that the investigation and the first instance court committed a significant violation of the requirements of article 79, paragraph 4, of the Criminal Procedure Code in that an attorney, who had previously defended the alleged victim of the murder, was allowed to act as defence attorney for V.L. Taking into consideration that the above-mentioned violation is grounds for the return of a case for additional investigation, on 11 November 2011 the General Prosecutor's Office submitted a request for a supervisory review of all court decisions taken with regard to V.L. and the return of that part of the case for additional investigation.

Authors' comments on the State party's observations and further submissions

5.1 On 13 December 2011, the authors submitted that the General Prosecutor's request for a supervisory review had been granted by the Supreme Court on 1 December 2011, but maintained that the request itself was in contradiction with the domestic law. They submit that, according to the law, not ensuring the right to defence of a minor is a severe violation of criminal procedure, which should result in revocation of all the court decisions in the case. In addition, the case of V.S. was not included in the General Prosecutor's request and in the decision of the Supreme Court. The authors maintain that the verdict in 2010 against V.S. was based on the testimony of the investigator or testimonies of "non-existent" witnesses and that both verdicts were based on the same evidence, collected in violation of the rules of criminal procedure. According to the authors, the aim of the review was to reconfirm the verdict and to shield the prosecutor and investigator guilty of violating criminal procedure from responsibility, as was the aim of the retrial of V.S. in 2010. The authors also maintain that the verdict against V.S. in 2010 was issued in violation of the criminal procedure, because it was based on the testimonies of witnesses who were not summoned in 2010 and were not questioned during the retrial.

5.2 On 21 December 2011, the authors submitted that the attorney of the victims had requested that all court decisions against the victims should be fully revoked, but in its decision of 1 December 2011, the Supreme Court had ignored the request and returned only the case regarding V.L. for additional investigation. They also submit that on 29 November 2011, the Prosecutor's Office rejected their request to initiate criminal proceedings against a medical expert (name on file), who had conducted an inadequate medical examination and then provided a false testimony during the trial of the victims. The authors maintain that the expert did not have the necessary qualifications to conduct an expertise regarding the alcohol levels of the victims, that he did not find any signs of intoxication in them, but nonetheless issued a conclusion that they were intoxicated, and therefore he committed perjury. The Ministry of Health has established that the expert committed three violations while conducting the expertise, but the Prosecutor's Office took into consideration only a violation of an instruction and the expert received a rebuke as a disciplinary punishment.²

5.3 On 23 and 24 January 2012, the authors submitted that for one and a half years their complaints that an investigation of minors had been conducted in the absence of a lawyer had been ignored by the authorities and that the General Prosecutor's Office only requested a supervisory review after the Bar Association initiated criminal proceedings against the lawyers who had taken part in the trial. They reiterate that even in that request the

² The authors provide a copy of the decision of the Prosecutor's Office, which mentions that the medical expert received a disciplinary punishment for violating the rules on instruction N05/01-1/37/5/224 of 18 April 1992.

Prosecutor's Office continued to insist that the guilt of V.S. had been fully proven. They maintain that the retrial of V.S. in 2010 was limited to taking his and V.L.'s testimonies in the presence of a lawyer; they both denied their guilt, but the court did not verify any of the other evidence. The court convicted V.S. for a second time on 19 November 2010 and the appellate instance confirmed the verdict on 22 December 2010. The authors describe and contest the evidence that the court used in assessing the guilt of V.S. They submit that the General Prosecutor's request for a supervisory review in 2011 also stated that the guilt of V.L. had been established and maintained that his retrial would be as unproductive as the one for V.S.³

5.4 On 10 April 2012, the authors submitted that on 26 March 2012, the Tashkent Regional Court convicted V.L. to eight years of imprisonment, reducing the sentence issued in 2008 by six months. The authors submit that the trial was a "theatre play" for the Committee. The hearings took place between 10 February 2012 and 26 March 2012. The authors were refused permission to film the hearings, allegedly for technical reasons. The prosecutor slept during the hearings, for her closing statement she repeated the closing statement of the prosecutor from 2008 and in addition she requested that the conviction be increased to nine years' imprisonment. V.L.'s attorney made an oral statement and provided a copy to the court, but in the verdict the judge stated that no statement had been made by the defence. The authors describe further evidence and the alleged failure of the court to properly assess it and establish the innocence of V.L. They allege that in the verdict the judge made reference to evidence that was not in fact presented during the hearings.⁴ Even though the Supreme Court had recognized that the confessions given by V.S. and V.L. were invalid and revoked the original verdict for that reason, the judge based the new verdict on the same confessions. The authors also submit that the health of V.S. and V.L. has significantly deteriorated while in detention.

State party's observations

6. On 5 January 2015, the State party resubmitted its observations provided on 30 November 2011.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the claim is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes that the State party has not objected to the admissibility of the communication under article 5 (2) (b) of the Optional Protocol. The Committee considers that it is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol from examining the present communication.

7.4 The Committee takes note of the authors' claims that the rights of their son and nephew under article 14 of the Covenant were violated during the initial proceedings, because the lawyer initially representing V.S. and V.L. had previously represented the

³ The authors provide copies of court records from the initial trial and evidence that V.S.'s attorney presented to the court of first instance in 2010.

⁴ A copy of the verdict is provided by the authors.

murder victim in another criminal case and because, during a criminal investigation in 2010, the same lawyer admitted appropriating the money paid to him for the defence of V.S. and falsifying an appointment order in the name of a colleague. The Committee, however, observes that based on the above-mentioned violations, the original verdicts against V.S. and V.L. were revoked, that they were tried again, that during the retrials they were assisted by lawyers of their choice and that they were convicted for a second time on 19 November 2010 and 26 March 2012 respectively. The Committee considers, therefore, that the authors have failed to provide sufficient substantiation of their claim of a violation of article 14 of the Covenant, and that the claim is therefore inadmissible under article 2 of the Optional Protocol.

7.5 The Committee also notes the authors' allegations that the second trials against V.S. and V.L. were unfair and that the courts failed to properly assess the evidence before them. The Committee, however, notes that the authors' claims basically refer to the evaluation of the facts and the evidence, and the application of domestic legislation by the courts of the State party. The Committee recalls its case law, according to which it is for the courts of States parties to evaluate the facts and the evidence in each case, or the application of domestic legislation, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.⁵ The Committee notes, however, that the materials on file, including the copies of the summary records and the verdicts, do not support the allegations of the authors. As it transpires from the file, during the retrial V.S. and V.L. were given the possibility of making statements in the presence of their lawyers and the judge. The Committee further notes that in pronouncing the verdicts against V.S. and V.L., the courts do not appear to have relied on the confessions made by them during the pretrial investigation. Nor does it appear that allegations of coercion were raised during the court proceedings. The Committee considers, therefore, that the authors have failed to provide sufficient substantiation of their claim of a violation of article 14 of the Covenant and that the claim is therefore inadmissible under article 2 of the Optional Protocol.

7.6 The Committee considers that the authors have sufficiently substantiated their claims under articles 7, 10 (1) and 24 of the Covenant for purposes of admissibility and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

8.2 The Committee notes the authors' claims that during the pretrial investigation the investigating officer tortured the alleged victims in order to force them to confess, that they were repeatedly beaten, refused food and not given warm clothing; that while in pretrial detention their families were allowed to visit the boys only once, in November 2008, after the preliminary investigation had been already concluded; that during the visit they found that the boys were still wearing summer clothes, while the temperature outside was -15°C and the cells were not heated; that during an interrogation the investigating officer broke the leg of V.S. and refused to provide medical assistance; and that all of the above constitute violations of articles 7 and 10 (1) of the Covenant. The Committee further notes that the alleged victims complained about the above-mentioned treatment to various

⁵ See communications No. 1616/2007, *Manzano et al. v. Colombia*, decision on admissibility adopted on 19 March 2010, para. 6.4; No. 1622/2007, *L.D.L.P. v. Spain*, decision on admissibility adopted on 26 July 2011, para. 6.3; and No. 2358/2014, *G.C.A.A. v. Uruguay*, decision on admissibility adopted on 2 November 2015, para. 8.8.

authorities, including the Prosecutor's Office and the Supreme Court. The Committee notes that the State party has not refuted the allegations, but has merely provided information regarding the criminal charges and the verdict against the alleged victims. In that regard, the Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially.⁶ The Committee further recalls that the State party is responsible for the security of all persons held in detention and that when there are allegations of torture and mistreatment, it is incumbent on the State party to produce evidence refuting the author's allegations.⁷ In the absence of any explanation from the State party, the Committee has to give due weight to the authors' allegations.⁸ Accordingly, the Committee concludes that the facts before it disclose violations of the rights of V.S. and V.L. under articles 7 and 10 (1) of the Covenant.⁹

8.3 The Committee notes the authors' claims that on 18 and 19 August 2008, V.S. and V.L. were questioned as suspects in the Prosecutor's Office in Almalyk in the absence of attorneys or parents and that they were not allowed family visits for the first three months of their detention. The Committee notes that the State party has not refuted those allegations, but has merely provided information regarding the criminal charges and the verdict against the alleged victims. The Committee notes that detainees should be guaranteed prompt and regular access to independent medical personnel and lawyers and, under appropriate supervision when the legitimate purpose of the detention so requires, to family members. The Committee also recalls its general comment No. 35 (2014) on liberty and security of person, in which it states that when children are arrested, notice of the arrest and the reasons should also be provided directly to their parents, guardians or legal representatives.¹⁰ It further recalls that article 24 (1) of the Covenant entitles every child "to such measures of protection as are required by his status as a minor on the part of his family, society and the State." That article entails the adoption of special measures to protect the personal liberty and security of every child, in addition to the measures generally required by article 9 for everyone.¹¹ The Committee therefore considers that the State party has also violated article 24 (1) in respect of V.S. and V.L., who, as minors, should have been afforded special protection.¹²

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 7, 10 (1) and 24 (1) of the Covenant, with regard to V.S. and V.L.

10. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the victims with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to carry out an impartial, effective and thorough investigation

⁶ See the Committee's general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, para. 14.

⁷ See communication No. 2079/2011, *Khadzhiev v. Turkmenistan*, Views adopted on 1 April 2015, para. 8.4.

⁸ See communications No. 1900/2009, *Mehalli v. Algeria*, Views adopted on 21 March 2014, para. 7.10, and No. 2234/2013, *M.T. v. Uzbekistan*, Views adopted on 23 July 2015, paras. 7.2-7.4.

⁹ See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 60, and communication No. 1401/2005, *Kirpo v. Tajikistan*, Views adopted on 27 October 2009, para. 6.3.

¹⁰ See also communication No. 1402/2005, *Krasnova v. Kyrgyzstan*, Views adopted on 29 March 2011, para. 8.5; the Committee's general comment No. 32, para. 42; and Committee on the Rights of the Child, general comment No. 10 (2006) on children's rights in juvenile justice, para. 48.

¹¹ See the Committee's general comments No. 17 (1989) on the rights of the child, para. 1, and No. 32, paras. 42-44.

¹² See communication No. 2132/2012, *Allioua and Kerouane v. Algeria*, Views adopted on 30 October 2014, para. 7.12.

into the allegations of torture and ill-treatment, initiate criminal proceedings against those responsible and provide the victims with appropriate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State has recognized 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, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views, to translate them into the official languages of the State party in an accessible format and to have them widely disseminated in the official languages.
