



**International covenant  
on civil and  
political rights**

Distr.  
RESTRICTED\*

CCPR/C/95/D/1276/2004  
23 April 2009

Original: ENGLISH

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HUMAN RIGHTS COMMITTEE  
Ninety-fifth session  
16 March – 3 April 2009

**VIEWS**

**Communication No. 1276/2004**

<u>Submitted by:</u>	Mrs. Zulfia Idieva (not represented by counsel)
<u>Alleged victim:</u>	Mr. Umed Idiev (the author's son, deceased)
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	13 April 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 13 April 2004 (not issued in document form)
<u>Date of adoption of Views:</u>	31 March 2009

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

*Subject matter:* Imposition of death penalty and subsequent execution in spite of request for interim measures of protection.

*Substantive issues:* Right to life; torture, cruel, inhuman or degrading treatment or punishment; arbitrary detention; fair hearing; impartial tribunal; right to be presumed innocent; right to be informed of the right to have legal assistance; right not to be compelled to testify against oneself or to confess guilt.

*Procedural issues:* Non-substantiation of claim; non-exhaustion of domestic remedies.

*Articles of the Covenant:* 6, paragraphs 1 and 2; 7; 9, paragraphs 1 and 2; 14, paragraphs 1, 2, 3(d), 3(e) and 3(g)

*Article of the Optional Protocol:* 2

On 31 March 2009 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. 1276/2004.

[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- fifth session

concerning

**Communication No. 1276/2004\*\***

Submitted by: Mrs. Zulfia Idieva (not represented by counsel)  
Alleged victim: Mr. Umed Idiev (the author's deceased son)  
State party: Tajikistan  
Date of communication: 13 April 2004 (initial submission)

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

Meeting on 31 March 2009,

Having concluded its consideration of communication No. 1276/2004, submitted to the Human Rights Committee on behalf of Mr. Umed Idiev 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 is Mrs. Zulfia Idieva, a Tajik national born in 1957. She submits the communication on behalf of her son, Mr. Umed Idiev, also a Tajik national born in 1979. At the time of submission of the communication, the victim was detained on death row in Dushanbe, awaiting execution, after a death sentence imposed on him by the Judicial Chamber for Criminal Cases of the Supreme Court on 24 February 2003. The author claims violations by Tajikistan of her son's rights under article 6, paragraphs 1 and 2; and article 7; article 9, paragraphs 1 and 2; article 14, paragraphs 1, 2, 3(d) and 3(g), of the International Covenant on Civil and Political

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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. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

Rights. She is unrepresented. The Optional Protocol entered into force for the State party on 4 April 1999.

1.2 Under rule 92 of its Rules of procedure, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party, on 13 April 2004<sup>1</sup>, not to execute the author's son, so as to enable the Committee to examine his case. This request was reiterated by the Committee on 26 April 2004. By note of 11 May 2004, the State party informed the Committee that the Government Commission on Ensuring Compliance with International Human Rights Obligations requested the Supreme Court, General Prosecutor's Office and the Ministry of Justice to consider Mr. Idiev's criminal case and to provide the State party's observations to the Committee within the deadline stipulated. On 20 May 2004, the State party informed the Committee that Mr. Idiev's death sentence had been carried out on an unspecified date, as the Committee's request had arrived too late.

1.3 On 28 May 2004, the author provided a copy of her son's death certificate, stating that Mr. Idiev was executed on 24 April 2004, i.e. 11 days after the Committee's request not to carry out his execution was duly addressed to the State party. On 3 June 2004, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party to provide it with detailed information on the time and circumstances of Mr. Idiev's execution. No reply to this request has been received from the State party.

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

2.1 Towards the end of 1997, one Rakhmon Sanginov created a criminal gang, which began to commit robberies, murders and to take hostages. By force and using death threats, he coerced young men from the district where his gang was operating to join the gang and to commit crimes. Among many others, Mr. Idiev was thus forced to become a member of Mr. Sanginov's gang in February 1998. He deserted in April 1998.

2.2 On 12 August 2001, officers of the Organised Crime Department (OCD) of the Ministry of Interior came to Mr. Idiev's home to arrest him. As he was not at home then, the author herself was taken by OCD officers to their premises and kept there for the next two days. On 14 August 2001, Mr. Idiev was arrested by OCD officers; his mother was released the same day. For five days, Mr. Idiev was detained on OCD premises and allegedly subjected to beatings with truncheons and electric shocks to various parts of his body. He was forced to confess to having committed a number of crimes, including murders and robberies. He did not have access to a lawyer, and his rights were not read to him. On 19 August 2001, an OCD officer for the first time officially reported to his supervisors about Mr. Idiev's arrest.

2.3 On 23 August 2001, a protocol of Mr. Idiev's detention of short duration was drawn up. It mentioned murder under aggravating circumstances (article 104, part 2, of the Criminal Code). The same day, he was placed in a "temporary confinement ward" (IVS). He was forced to tell a

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<sup>1</sup> The Committee's request was sent to the State party's Permanent Mission to the United Nations by ordinary mail, on 13 April 2004. On 14 April 2004, the Committee's request under rules 92 and 97 of its rules of procedure was faxed to the Permanent Mission and to the Ministry of Foreign Affairs of Tajikistan.

doctor who attested to his health condition prior to the transfer to IVS that he had not been ill-treated while in detention; such medical certificate was a prerequisite for the transfer.

2.4 Mr. Idiev's arrest warrant was issued by a prosecutor on 26 August 2001. The next day, he was interrogated as a suspect and took part in the reconstruction of the crime at the crime scene, on both occasions in the absence of a lawyer. The author's criminal case was opened by the General Prosecutor's Office on 31 August 2001.

2.5 On 3 September 2001, before being formally read the charges against him, Mr. Idiev was for the first time assigned a lawyer, after written request by the investigator. When the interrogation ended, the investigator invited the lawyer, one Kurbonov, who signed the interrogation protocol, although Mr. Idiev had never seen the lawyer before and was unaware that he had been assigned to him. Subsequently, this lawyer participated in no more than two investigative actions, namely, Mr. Idiev's interrogation as an accused and presentation of an additional count of murder on 12 November 2001. The reconstruction of the crime at the crime scene, however, was carried out on 17 October 2001 in the absence of the lawyer.

2.6 The trial of Mr. Idiev by the Judicial Chamber for Criminal Cases of the Supreme Court took place from 3 May 2002 to 24 February 2003. Although he was represented by a lawyer assigned by the court, the author claims that her son's trial was unfair and that the court was partial as appearing below:

a) In court, Mr. Idiev retracted his confessions obtained under duress during the pre-trial investigation. He argued that the law enforcement officers had used unlawful methods, including torture, during the interrogations and forced him to testify against himself. His testimony was allegedly ignored by the presiding judge, because he was unable to provide corroborating evidence, such as a medical and/or forensic certificate. In court, he admitted that while he was still a member of Mr. Sanginov's gang, he had killed the neighbours' son by inadvertently pulling his rifle's trigger. He explained that he had no intention to kill, and extended his apologies to the boy's parents.

b) Mr. Idiev was sentenced to death exclusively on the basis of his own confessions obtained by unlawful methods during the pre-trial investigation.

c) The court dismissed a motion submitted by his lawyer to summon and examine in court OCD officers who had arrested him on 14 August 2001 and illegally detained him until 19 August 2001, as also the investigator.

2.7 On 24 February 2003, the Judicial Chamber for Criminal Cases of the Supreme Court found Mr. Idiev guilty of banditry (article 186, part 2, of the Criminal Code), murder under aggravating circumstances (article 104, part 2) and under article 156, part 2 of the 1961 Criminal Code. He was sentenced to 15 years' imprisonment with seizure of property (under article 186) and to death with seizure of property (under articles and 156). Pursuant to article 67, part 3, of the Criminal Code, his aggregate sentence was the death penalty. On 17 November 2003, the Judicial Chamber for Criminal Cases of the Supreme Court upheld the death sentence.

2.8 The author states that the death penalty was not the only punishment that could have been imposed on her son under article 104, part 2, of the Criminal Code, as this article also envisages

a sentence of between 15 to 20 years' imprisonment. Under article 18, paragraph 5, of the Criminal Code, murder under aggravating circumstances is qualified as a particularly serious crime.

2.9 On an unspecified date, a request for pardon on behalf of Mr. Idiev was addressed to the President of Tajikistan. At the time of submission of the communication, no reply to this request had been received.

### **The complaint**

3.1 The author submits that in violation of articles 7 and 14, paragraph 3(g), her son was beaten and forced to confess his guilt.

3.2 She claims that her son was subjected to arbitrary arrest. Firstly, under article 412 of the Criminal Procedure Code, a suspect can be subjected to detention of short duration only on the basis of an arrest protocol. Those arrested under suspicion of having committed a crime must be detained in the IVS. Mr. Idiev, however, was detained on OCD premises from 14 August 2001 to 23 August 2001, the protocol of his detention of short duration was drawn up and he was placed into IVS only 9 days after he was arrested. During this time, he was forced to incriminate himself. The arrest warrant was served on him only on 26 August 2001. The author submits that her son's remand in custody from 14 August to 26 August 2001 violated article 9, paragraph 1, of the Covenant.

3.3 Under article 83 of the Criminal Procedure Code, the prosecutor may, in exceptional cases, apply a restraint measure, such as arrest, before filing formal charges. The Criminal Procedure Code however does not specify the meaning and scope of 'exceptional cases'. Mr. Idiev's arrest warrant indicated that he was arrested for 'having committed a crime', although he was formally charged only on 3 September 2001. The author submits that the issuance of an arrest warrant without the formal filing of charges is arbitrary. She invokes the Committee's Views in *Mukong v. Cameroon*,<sup>2</sup> where the Committee confirmed that "arbitrariness" was not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. In the present case, Mr. Idiev was remanded in custody for twenty-two days without being formally charged, contrary to article 9, paragraph 2, of the Covenant.

3.4 The author submits that the issuance of an arrest warrant without formal filing of charges also raises issues under article 14, paragraph 2, of the Covenant.

3.5 The author claims that her son's rights under article 14, paragraph 1, were violated, because the trial court was partial and conducted the trial in a biased way. It ignored Mr. Idiev's withdrawal of his confessions obtained under duress during the pre-trial investigation and dismissed a motion submitted by his lawyer to examine OCD officers and the investigator in court. This latter fact would also appear to raise issues under article 14, paragraph 3(e), though this provision has not been invoked by the author.

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<sup>2</sup> Communication No. 458/1991, *Albert Womah Mukong v. Cameroon*, Views adopted on 21 July 1994, paragraph 9.8.

3.6 The author adds that her son's rights under article 14, paragraph 3(d), were violated, because he was granted access to a lawyer only on 3 September 2001. Under article 51 of the Criminal Procedure Code, anyone suspected of having committed a crime punishable by death must be legally represented. Under principle No. 7 of the Basic Principles on the Role of Lawyers, '[g]overnments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer'.<sup>3</sup>

3.7 Finally, the author claims that her son's right to life protected by article 6, paragraphs 1 and 2, was violated, since the various breaches of the provisions of article 14 resulted in an illegal and unfair death sentence.

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

4. On 20 May 2004, the State party informed the Committee that Mr. Idiev's death sentence was carried out on an unspecified date, as the Committee's request arrived late and that, on 30 April 2004, the President of Tajikistan had announced the introduction of a moratorium on the application of death penalty. No further details either on the substance of his communication or on the circumstances of the execution of Mr. Idiev were provided by the State party.

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

5. On 28 May 2004, the author provided a copy of her son's death certificate, stating that her son had been executed on 24 April 2004, i.e. 11 days after the Committee's request not to carry out his execution was duly addressed to the State party. She refers to another communication against the same State party, which was registered by the Committee with the request not to execute the alleged victim on 23 February 2004 and in which the victim was in fact executed on the same day, as the author's son, i.e. on 24 April 2004. Although the Committee's request was duly addressed to the State party's authorities two months before the actual execution date, the State party justified its failure to respect its obligations under the Optional Protocol by the alleged late arrival of the Committee's request.

#### **Further submissions from the State party**

6.1 On 14 April 2006, the State party forwarded to the Committee a report from the General Prosecutor of Tajikistan dated 28 March 2006 and an undated letter of the First Deputy Chairperson of the Supreme Court. In his report, the General Prosecutor states that, as a member of Mr. Sanginov's gang, Mr. Idiev committed a number of serious crimes between January 1997 and July 2001, such as the murder of one Salomov on 25 March 1998, an armed robbery on 23 May 1998, and the murder of a six-year old boy on 12 April 1998. Mr. Idiev's guilt was proven by his confessions made during the pre-trial investigation and in court, witness testimonies, protocols of the reconstruction of the case at the crime scenes, and the conclusion of forensic medical examination. The General Prosecutor pointed out that the allegations of Mr. Idiev's sister that her brother was forced to become a member of Mr. Sanginov's gang; that his arrest by OCD officers was arbitrary; that his testimony was obtained under torture and that he was not

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<sup>3</sup> Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990).

promptly assigned a lawyer are uncorroborated. Pre-trial investigation and trial materials indicate that during the pre-trial investigation and in court Mr. Idiev gave his testimony freely, without pressure, and in the presence of his lawyer. The General Prosecutor concludes, therefore, that the court took into account both the aggravating and the extenuating circumstances in establishing Mr. Idiev's guilt and imposing punishment; that his sentence was proportionate to the crimes committed, and that there were no grounds to initiate the supervisory review procedure in the case.

6.2 The First Deputy Chairperson of the Supreme Court states that Mr. Idiev joined Mr. Sanginov's gang in January 1997 and was an active member until the end of 1998. He pleaded guilty from the first day of his arrest and testified that in 1995 he deserted Russian Border Troops stationed in Tajikistan after the first three months of military service and became a mujahedeen on his own initiative. Since Mr. Idiev admitted his guilt on all counts from the first day of his arrest, there was no need to use coercive methods. It is submitted that on 3 September 2001, Mr. Idiev was formally charged and produced a self-incriminating testimony in his lawyer's presence. On 12 November 2001, he was formally charged with an additional count of murder and he again produced a self-incriminating testimony, again in his lawyer's presence. A request for pardon on behalf of Mr. Idiev was denied by the President of Tajikistan on 21 April 2004. It is thus argued that there are no grounds to quash Mr. Idiev's sentence.

## **Issues and proceedings before the Committee**

### **Failure to respect the Committee's request for interim measures**

7.1 The author affirms that the State party executed her son 10 days after his communication had been registered under the Optional Protocol and a request for interim measures of protection was duly addressed to the State party<sup>4</sup>. The Committee notes that the State party does not contest that the execution of the author's son took place on 24 April 2004, i.e. on the date indicated in Mr. Idiev's death certificate provided by the author, but justifies failure to respect its obligations under the Optional Protocol by pleading the alleged "late arrival" of the Committee's request. In this regard, the Committee recalls that on 3 June 2004, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party to provide it with detailed information on the time and circumstances of Mr. Idiev's execution and notes that no reply to this request has been received from the State party. In the circumstances, the Committee concludes that the State party has failed to submit sufficient information that would show that the Committee's request not to carry out the execution of Mr. Idiev came too late and its alleged late arrival could not be attributed to the State party.

7.2 The Committee recalls<sup>5</sup> that by ratifying the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications

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<sup>4</sup> The initial communication was received on 13 April 2004. The Committee's request for interim measures (included in the Note Verbale informing the State party about the registration of the communication) was transmitted to the State party's authorities, including by fax, on 14 April 2004.

<sup>5</sup> See, Communication No. 869/1999, *Piandiong at al. v. the Philippines*, Views adopted on 19 October 2000.



from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and article 1). Implicit in a State's adherence to the Optional Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider communications, and after examination to forward its Views to the State party and to the individual submitting the communication (article 5, paragraphs 1 and 4). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the formulation and adoption of its Views.

7.3 Apart from any violation of the Covenant found against a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts so as to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In the present communication, the author alleges that her son was denied his rights under several provisions of the Covenant. Having been notified of the communication, the State party breached its obligations under the Optional Protocol by executing the alleged victim before the Committee could conclude its consideration and examination of the case, and the formulation, adoption and transmittal of its Views.

7.4 The Committee recalls<sup>6</sup> that interim measures pursuant to rule 92 of the Committee's rules of procedure adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Optional Protocol. Flouting of the rule, especially by irreversible measures such as the execution of the death penalty undermines the protection of Covenant rights through the Optional Protocol.

### **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 communication is admissible under the Optional Protocol to the Covenant.

8.2 The Committee notes that the same matter is not being examined under any other international procedure, in line with the requirements of article 5, paragraph 2(a), of the Optional Protocol. In the absence of any State party's objection, the Committee considers that the requirements of article 5, paragraph 2(b), of the Optional Protocol have been met.

8.3 The author claims that her son's tribunal was partial and biased in violation of article 14, paragraph 1 (see paragraph 3.5 above). The Committee notes that these allegations relate primarily to the evaluation of facts and evidence by the court. It recalls that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>7</sup> In the absence of any further pertinent information on file in this connection, which would show that the author son's trial did suffer from any such defects, the Committee considers that this part

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<sup>6</sup> See, Communication No 964/2001, *Saidova v. Tajikistan*, Views adopted on 8 July 2004.

<sup>7</sup> See, *inter alia*, Communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

of the communication is insufficiently substantiated and therefore inadmissible under article 2 of the Optional Protocol.

8.4 The author also claims that the issuance of her son's arrest warrant without formal filing of charges raises issues under article 14, paragraph 2. In the absence of any other pertinent information in this respect, the Committee considers that this part of the communication is inadmissible, as insufficiently substantiated, under article 2 of the Optional Protocol.

8.5 The Committee considers the author's remaining claims under article 6, paragraphs 1 and 2; article 7; article 9, paragraphs 1 and 2; and article 14, paragraphs 3(d), 3(e)<sup>8</sup> and 3(g), are sufficiently substantiated, for purposes of admissibility, and proceeds to their examination on the merits.

### **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 The author claims that her son was beaten and tortured by OCD officers to make him confess his guilt, contrary to article 7 and article 14, paragraph 3(g), of the Covenant. She argues that her son retracted his confessions in court, asserting that they had been made under torture; though his challenge to the voluntariness of the confessions was dismissed by the court. In the absence of any pertinent explanation on this matter from the State party, except for its remark that the allegations of Mr. Idiev's sister that her brother's testimony was obtained under torture have not been corroborated (paragraph 6.1 above), due weight must be given to the author's allegations. 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.<sup>9</sup> In this respect, the Committee recalls the author's detailed description of the treatment to which her son was subjected. It considers that in the circumstances, the State party failed to demonstrate that its authorities duly addressed the torture allegations advanced by the author. Nor has the State party provided copies of any internal investigation materials or medical reports in this respect.

9.3 Furthermore, as regards the claim of a violation of the alleged victim's rights under article 14, paragraph 3 (g), in that he was forced to sign a confession, the Committee must consider the principles that underlie this guarantee. It recalls its jurisprudence that the wording of article 14, paragraph 3(g), that no one shall "be compelled to testify against himself or confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological coercion by the investigating authorities of the accused with a view to obtaining a confession of guilt.<sup>10</sup> The Committee recalls that in cases of alleged forced confessions, the burden is on the State to

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<sup>8</sup> On the article 14, paragraph 3 (e) claim, please see paragraph 3.5 above.

<sup>9</sup> See, e.g., Communication No. 781/1997, *Aliiev v. Ukraine*, Views adopted on 7 August 2003, paragraph 7.2.

<sup>10</sup> Communication No. 330/1988, *Berry v. Jamaica*, Views adopted on 4 July 1994, paragraph 11.7, Communication No. 1033/2001, *Singarasa v. Sri Lanka*, Views adopted on 21 July 2004, paragraph 7.4, and Communication No. 912/2000, *Deolall v. Guyana*, Views adopted on 1 November 2004, paragraph 5.1.

prove that statements made by the accused have been given of their own free will.<sup>11</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.<sup>12</sup> The Committee notes that the State party has not provided any arguments, corroborated by pertinent documentation to refute the author's claim that her son was compelled to confess guilt, although it had the opportunity to do so, and the author has sufficiently substantiated this claim. In the circumstances, the Committee concludes that the facts before it disclose a violation of article 7 and article 14, paragraph 3 (g), of the Covenant.

9.4 The Committee has noted that the author has claimed that on 14 August 2001, her son was arrested arbitrarily, he was detained unlawfully in the premises of the Ministry of Internal Affairs for nine days, without being formally charged (see paragraphs 3.2 and 3.3 above), and during this period of time, he was forced to confess guilt; he was formally charged only on 3 September 2001. The Committee notes that these allegations were not refuted by the State party specifically. In the circumstances, and in the absence of any other pertinent information on file, due weight must be given to the author's allegations. Accordingly, the Committee considers that the facts as presented reveal a violation of the author son's rights under article 9, paragraphs 1 and 2, of the Covenant.

9.5 The Committee has noted the author's claim that her son was not granted access to a lawyer until 3 September 2001, having been detained on 14 August 2001. The Committee notes that although the author's son was facing a number of serious charges which could result in a death sentence, no lawyer was assigned to him before the 3 September 2001. It also notes that the State party has not refuted these allegations specifically but has merely affirmed that on 3 September 2001, as well as in court, Mr. Idiev confessed his full guilt freely, in the presence of a lawyer. The Committee recalls that, particularly in cases involving capital punishment, it is axiomatic that the accused must effectively assisted by a lawyer at all stages of the proceedings. In the absence of any other pertinent information on file, the Committee considers that the facts as presented reveal a violation of the author's rights under article 14, paragraph 3 (d), of the Covenant. In light of this conclusion, the Committee does not find it necessary to examine separately the rest of the author's allegations which might raise other issues under this provision.

9.6 The Committee notes the author's claim that her son's lawyer motioned the court to summon and examine OCD officers and the investigator in court, but the judge summarily denied this motion. The Committee recalls that, as an application of the principle of equality of arms, the guarantee of article 14, paragraph 3(e), which is important for ensuring an effective defence by the accused and their counsel and by guaranteeing the accused the same legal power of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.<sup>13</sup> It does not, however, provide an unlimited right to obtain the attendance of any witness requested by the accused or counsel, but only a right to have witnesses

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<sup>11</sup> Human Rights Committee, General Comment No. 32, CCPR/C/GC/32, 23 August 2007, paragraph 49.

<sup>12</sup> Communication No. 30/1978, *Bleier v. Uruguay*, Views adopted on 24 March 1980, paragraph 13.3.

<sup>13</sup> *Supra* n.11, paragraph 39.

examined who are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings. Within such limits, and subject to the limitations on the use of statements, confessions and other evidence obtained in violation of article 7, it is primarily for the domestic legislature of States parties to determine the admissibility of evidence and how their courts assess such evidence.<sup>14</sup> In the present case, the Committee observes that all the individuals mentioned in the motion submitted by Mr. Idiev's lawyer and rejected by the court, could have provided information relevant to his claim of being forced to confess under torture during the pre-trial investigation. The Committee therefore concludes that the State party's courts did not respect the requirement of equality between the prosecution and the defence in producing evidence and that this amounted to a denial of justice. The Committee therefore concludes, Mr. Idiev's right under article 14, paragraph 3(e), was violated.

9.7 The Committee recalls its jurisprudence to the effect that that the imposition of a death sentence after a trial that did not meet the requirements of a fair trial amounts to a violation of article 6 of the Covenant.<sup>15</sup> In the present case, Mr. Idiev's death sentence was passed in violation of the guarantees set out in article 7 and article 14, paragraph 3(g); and article 14, paragraphs 3 (d) and (e), of the Covenant, and thus also in breach of article 6, paragraph 2, of the Covenant.

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 of Mr. Idiev's rights under article 7; article 9, paragraphs 1 and 2; article 14, paragraphs 3 (d), (e), and (g); and a violation of article 6, paragraph 2, read together with article 14, paragraph 3 (d), (e) and (g), of the Covenant. The State party also breached its obligations under article 1 of the Optional Protocol.

11. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide an effective remedy, including initiation and pursuit of criminal proceedings to establish responsibility for the ill-treatment of the author's son and a payment of 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.

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<sup>14</sup> *Ibid.*

<sup>15</sup> See, *inter alia*, Communication No. 907/2000, *Siragev v. Uzbekistan*, Views adopted on 1 November 2005, paragraph 6.4.

[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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