



**International covenant
on civil and
political rights**

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

VIEWS

Communication No. 1195/2003

<u>Submitted by:</u>	Mr. Vladimir Dunaev (not represented by counsel)
<u>Alleged victim:</u>	Mr. Vyacheslav Dunaev (author's son)
<u>State party:</u>	Tajikistan
<u>Date of communication:</u>	25 July 2003
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 29 July 2003 (not issued in document form).
<u>Date of adoption of Views:</u>	30 March 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of death sentence after unfair trial.

Substantive issues: Torture; forced confession; unfair trial.

Procedural issue: Level of substantiation of claim.

Articles of the Covenant: 6; 7; 9; 10; 14, paragraphs 1, 2, and 3 (b), (e), and (g)

Article of the Optional Protocol: 2

On 30 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.1195/2003.

[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-fifth session

concerning

Communication No. 1195/2003**

Submitted by: Mr. Vladimir Dunaev (not represented by counsel)

Alleged victims: Mr. Vyacheslav Dunaev (author's son)

State party: Tajikistan

Date of communication: 25 July 2003 (initial submission)

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

Meeting on 30 March 2009,

Having concluded its consideration of communication No. 1195/2003, submitted to the Human Rights Committee on behalf of Mr. Vyacheslav Dunaev 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 is Mr. Vladimir Dunaev, a Russian national born in 1940, currently residing in Tajikistan. He submits the communication on behalf of his son, Vyacheslav Dunaev, also a Russian national born in 1964, who, at the time of the submission of the communication was detained on death row in Tajikistan, following of death sentence imposed by the Sogdiisk Regional Court, on 10 October 2002. The author claims that his son is the victim of a violation, by Tajikistan, of his rights under article 6; article 7; article 9; article 10; and article

** 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. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

14, paragraphs 1, 2, and 3 (b), (c), (e), and (d) of the International Covenant on Civil and Political Rights. The author is unrepresented¹.

1.2 When registering the communication on 29 July 2003, and pursuant to rule 92 of its Rules of Procedures, the Human Rights Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party not to carry out Mr. Dunaev's death sentence, pending consideration of his case. On 4 December 2003, the State party informed the Committee that Mr. Dunaev's death sentence was commuted by the Supreme Court of Tajikistan, on 7 November 2003, to 25 years' prison term.

The facts as presented by the author

2.1 On 1 August 2002, one Ms. Khairulina was found murdered in her apartment in the city of Bobodzhon (Tajikistan). Her body revealed marks of violence. According to the author, the murdered woman sold alcoholic drinks in her apartment at night. A medical-forensic expert concluded that the death of Ms. Khairulina occurred as a consequence of "mechanical asphyxia".

2.2 The author's son was arrested, on 4 August 2002, as a suspect in the murder. The author notes that his son had already been convicted twice by that date, including for murder. His son's previous criminal record was allegedly used by the police, in order to accuse him of the above crime.

2.3 The author claims that immediately after his arrest, his son was beaten and was subjected to tortures on premises of the Ministry of Internal Affairs' Department (Bobchon-Gafurovsky District). As a consequence, his son sustained two broken ribs. His son was forced to confess guilt. He was placed in an isolation cell, where he was also beaten, and he was not provided with food or water. His son's repeated requests to be examined by a doctor were ignored. His arrest record was only prepared in the evening of 5 August 2002, and the investigators assigned a lawyer to him on that moment.

2.4 The author claims that his son's case was investigated by one Mr. Aliev, who acted in a superficial and biased manner. The author son's depositions were not reflected correctly in the records prepared by the investigator. The investigator also allegedly made no attempt to verify his son's alibi.

2.5 The author's son was kept for a month and a half in a Temporary Detention Centre of the Bobchon-Gafurovsky District of Internal Affairs. Allegedly, he was constantly beaten there. The author contends in this connection, that throughout the investigation, his son was beaten by police officers and by investigators alike. He was not allowed to meet with anybody, including with his assigned lawyer. As a result, all the evidence in the case file were fabricated. The investigation focused on depositions of one Amonbaev, who was a co-accused in the criminal case. Thus, Amonbaev allegedly gave false depositions, incriminating the author's son. According to the author, his son warned the investigators about this, but his claims were ignored.

2.6 The author adds that his son was unable to meet with his lawyer throughout the preliminary investigation. Following his son's related complaint to the Regional Prosecutor's

¹ The Optional Protocol entered into force for the State party on 4 April 1999.

Office, the investigator and the lawyer then allegedly persuaded his son to sign certain documents without however permitting him to examine the content of his criminal case file. When at some point the family decided to hire another lawyer, the investigator denied him the right to take part in the proceedings. The author allegedly complained about this to the Office of the Prosecutor General and to the Supreme Court, but his letters were referred back to the investigator.

2.7 The author adds that his son had informed him that he was also beaten after his transfer to the Pre-trial Detention Centre in Khudzhand city. Allegedly, he was handcuffed to a radiator there, and beaten, again to force him to confess guilt. The author was only able to meet his son in September 2002². He contends that his son was all black and blue as a result of the beatings suffered when he saw him for the first time after his arrest. His son explained that he was constantly beaten, that he had difficulties in speaking, and he was complaining about a pain on one side. The meeting took place in the presence of eight policemen and the investigator Aliev.

2.8 The author further claims that up to the date of the court trial, his son was kept in isolation, where he was constantly beaten.

2.9 On 10 October 2002, the Sogdiisk Regional Court found the author's son guilty of the murder, and sentenced him to death. The court allegedly examined the case in an accusatory manner. The author son's depositions were ignored. The court also ignored a number of witnesses' depositions. His co-accused, Amonbaev, was sentenced to 23 years' prison term. The author's case was examined, on appeal, by the Supreme Court of Tajikistan (exact date not specified) and the sentence was upheld³.

The complaint

3.1 The author claims that his son is a victim of a violation of his rights under article 7 of the Covenant, given that he was beaten and tortured by police officers and investigators. He claims that in spite of several complaints, made both by his son and his relatives, no inquiry was ever initiated into the torture allegations.

² The author contends, without providing dates, that he could see his son only at the start of the court trial.

³ The author submits a copy of his appeal addressed to the Supreme Court and to the Office of the Prosecutor General, dated 2 July 2003. In this letter, he affirms that he has been beaten, on the third floor of the Gofurovsky Department of the Ministry of Internal Affairs. He had two broken ribs as a result. The beatings have continued also in his cell, where he was kept individually. His requests to receive a medical assistance were ignored. The author's son further contends in his appeal that during a break, at the trial court, his lawyer explained to him that it would be better to accept the version of his co-accused. The lawyer apparently stressed that in this way, he would receive a prison term and not the death penalty. The lawyer also pointed out that afterwards, on appeal, the author's son would be able to write, complain, and obtain justice. The author's son explains in his appeal that as he believed that the trial was programmed, he listened to the lawyer and confirmed some of the depositions of his co-accused.

3.2 The author claims, without providing any detail, that his son's rights under article 9, paragraphs 1, 2, and 3, were violated⁴.

3.3 The author invokes article 10, paragraph 1, of the Covenant, and claims that the conditions of detention during his son's arrest and throughout the preliminary detention were inhuman and degrading, as his son was kept in isolated and constantly subjected to beatings.

3.4 The author claims a violation of his son's right to be presumed innocent, under article 14, paragraph 2, because neither during the investigation nor in court, his son's involvement in the crimes was established beyond doubt, but the tribunals found him guilty and ignored his depositions, as he had two previous criminal convictions. The author's son was convicted only on the basis of the depositions of Mr. Amonbaev, who had a particular interest in the case.

3.5 According to the author, his son's right under article 14, paragraph 3 (b), was violated during the preliminary investigation. His son was prevented from meeting with his appointed counsel and could not prepare his defence properly. In addition, this lawyer allegedly failed to defend his son's interests. The lawyer in question persuaded his son to retract some of his claims and to sign certain procedural documents. The lawyer was often absent and signed the investigation records *post factum* and *pro forma*.

3.6 The author claims that his son's rights under article 14, paragraph 3 (e), were violated, as during the trial, both the court and the investigation allegedly prevented witnesses from being interrogated. The investigator in charge of the case was present in the court room and called witnesses to the bar, allegedly after giving them instructions on how to testify.

3.7 According to the author, his son is a victim of a violation of his right under article 14, paragraph 3 (g), as he was forced to confess his guilt.

3.8 Finally, the author contends that the above facts reveal also a violation of his son's rights under article 6 of the Covenant, as his death sentence was imposed on him after an unfair trial that did not meet the requirements of article 14.

State party's observations on admissibility and merits

4.1 The State party presented its observations on 4 December 2003. It explains that in accordance with information provided by the Government's Commission on the fulfilment of the State party's international human rights' obligations, Mr. Dunaev was sentenced to death on 10 October 2002 by the Sogdiisk Regional Court. He was found guilty of having murdered one Mrs. Khairulina, on 31 July 2002, in order to rob her, acting on agreement with his co-accused, Mr. Amonboev.

4.2 Mr. Dunaev's guilt in the murder and the robbery was established not only on the basis of his depositions in court, but also on the basis of a multitude of other evidence, such as the depositions of Mr. Amonboev and other witnesses, records on the seizure of a mask, gloves, a shirt, biological expert's conclusion (No. 19 of 29 August 2002, pursuant to which the seized

⁴ This claim was not part of the initial submission but was formulated only on a later stage (see paragraph 5.2 hereafter).

shirt disclosed samples of human blood from the same blood group as that of the murdered), as well as the conclusions of a forensic/medical examination (No. 65, of 3 September 2002).

4.3 The State party affirms that according to order No. 83 of 9 August 2002, Mr. Dunaev was assigned a lawyer, Mr. Nasrulloev. It contends that the author's allegations that his son was prevented from meeting with the lawyer are totally groundless, as the lawyer in question was present from the moment when it was decided on whether to place Mr. Dunaev in custody; when his client was given the opportunity to consult his indictment act; as well as during the conduct of other investigation acts.

4.4 At the end of the preliminary investigation, Mr. Dunaev and his lawyer were given the opportunity to familiarize themselves with the content of the criminal case file. This is confirmed, inter alia, by the fact that, on this occasion, they made a procedural request, and their request was fully complied with.

4.5 In accordance with the conclusions of a medical-forensic expert act No 1443 of 27 August 2002, Mr. Dunaev's body disclosed no corporal injuries⁵. Therefore, the author's allegations about beatings and torture inflicted on his son are groundless.

4.6 The State party adds that the author appealed the death sentence to the Supreme Court (no specific date provided). On an unspecified date, the Supreme Court confirmed the death sentence. On 7 November 2003, by decision of the Plenum of the Supreme Court of Tajikistan, the death sentence was commuted to 25 years in prison.

Author's comments on the State party's observations

5.1 On 11 March 2004, the author reiterated his initial allegations. He recalled that all evidence in the criminal case were fabricated by the investigators and were based on the false testimony and perjury of Mr. Amonbaev, whose sister, according to the author, was present in the victims' apartment on 31 July 2002. He adds that his son had an alibi – he had spent the whole night in a bar in Kairakkum city and left only at 5 a.m., on 1 August 2002. The totality of the bar's personnel – the owner, her husband, her children and a nephew all could have confirmed that Mr. Dunaev was there that night; but none of them were interrogated during the preliminary investigation. The court interrogated only the owner of the bar.

5.2 He adds, without further details, that his son's rights under article 9, paragraphs 1, 2, and 3, were also violated.

Issues and proceedings before the Committee

Consideration of the admissibility

6.1 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.

⁵ The State party does not submit a copy of the document in question.

6.2 The Committee notes, as required by article 5, paragraph 2 (a) and (b), of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement, and that it is uncontested that domestic remedies have been exhausted.

6.3 The Committee has noted the author's claim under article 9 of the Covenant. It observes that the author made this claim in very general terms, without specifying which particular acts committed by the State party's authorities amounted to a violation of his son's rights under article 9. In the absence of any further information in this relation, the Committee considers that this part of the communication is inadmissible as insufficiently substantiated, pursuant to article 2 of the Optional Protocol.

6.4 The Committee has noted that the author has invoked a violation of his son's rights under article 14, paragraph 2, of the Covenant as the tribunals have failed to establish his son's guilt beyond reasonable doubt (see paragraph 3.4 above). It also notes that the State party's has not refuted this allegation specifically, but has contended that Mr. Dunaev's guilt was dully established and his sentence was grounded. In the absence of any further detailed information in this relation on file, that would permit the Committee to verify the author's particular allegations, and, in particular, in the absence of any indication showing that these allegations were ever drawn to the attention of the State party's courts, the Committee considers that this part of the communication is inadmissible, under article 2 of the Optional Protocol, as insufficiently substantiated.

6.5 The Committee noted the author's claims that his son's defence rights, under article 14, paragraph 3 (b), have been violated. The State party has refuted these allegations, by pointing out that Mr. Dunaev has been assigned a lawyer, on 9 August 2002, and this lawyer was present when it was decided to place Mr. Dunaev in custody, and throughout the preliminary investigation. The Committee considers that in the absence of any other pertinent information and documentation on file in this relation that would permit it shed light on this contradictory information, this part of the communication is inadmissible under article 2 of the Optional Protocol, as insufficiently substantiated.

6.6 The author has also claimed, in general and sometimes contradictory terms that in violation of article 14, paragraph 3 (e), the court refused to, or did not, call a number of witnesses, whose depositions could have been of interest to the solution of case and who could confirm his son's alibi. In the absence of any other pertinent information on file, the Committee declares this part of the communication inadmissible under article 2 of the Optional Protocol, as insufficiently substantiated.

6.7 The Committee notes that the author claims that, in violation of article 7 and 14, paragraph 3 (g), his son was beaten and forced to confess guilt, and that the court ignored this and rejected all claims in this relation. The State party has replied in general terms, by affirming that these allegations are groundless, and that according to the conclusions of a medical-forensic expert of 27 August 2002, Mr. Dunaev's body displayed no injuries. The Committee notes however, that the author has provided a description of the treatment his son was allegedly subjected to; he has claimed, in addition, that his son had two ribs broken as a result. It notes that the author has submitted a copy of his son's appeal to the Supreme Court, where these allegations are invoked

directly. In the circumstances, and in the absence of other pertinent information, the Committee considers that due weight must be given to the author's allegations. It also observes that the State party does not dispute the author's contention that the torture allegations were raised at the author son's trial and that the Court did not investigate them. Therefore, it considers that the remaining allegations of the author, in as much as they appear to raise issues under articles 7; 10; and 14, paragraph (g); and article 6, of the Covenant, have been sufficiently substantiated, and declares them admissible.

Consideration on the merits

7.1 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.

7.2 In the present case, the author has claimed that his son was severely beaten, after his arrest, and throughout the preliminary investigation, by police officers and investigators, to the point that he sustained two broken ribs. He claims that as a consequence, his son was forced to confess his guilt, in breach to the requirements of articles 7 and 14, paragraph 3 (g) of the Covenant. The Committee notes that the State party merely replies that these allegations are groundless, and has explained that according to a medical expertise conducted on 27 August 2002, Mr. Dunaev's body disclosed no injuries. The Committee notes, however, that the State party has not provided a copy of the expertise in question nor explains in under what circumstances and in what context the expertise in question was carried out.

7.3 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 impartially⁶. It reiterates that, with regard to the burden of proof, it cannot rest alone with the author of a 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 information⁷. In light of the fairly detailed description of the author on the circumstances of his son's ill-treatment; the unavailability of any trial transcript or other court records; and in absence of any further explanations from the State party in this connection, the Committee decides that due weight must be given to the author's allegations. Therefore, the Committee concludes that the facts, as presented in the present case, reveal a violation of the author's son's rights under articles 7 and 14, paragraph 3 (g), of the Covenant. In light of this finding, the Committee considers it unnecessary to examine the author's claim made under article 10 separately.

7.4 The Committee notes that the author has invoked a violation of his son's rights under article 6 of the Covenant, as his son's death sentence was imposed on him after an unfair trial that did not meet the requirements of article 14. The Committee recalls that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes a violation of article 6 of the Covenant. In the present case, however, Mr. Dunaev's death sentence, passed on 10 October 2002, was commuted, on 7 November 2003,

⁶ See the Committee's General Comment No 20, (10 March 1992).

⁷ See, for example, Communication No. 161/1983, Emma Rubio de Herrera v. Colombia, Views adopted on 2 November 1987, paragraph 10.5.

by the Supreme Court of Tajikistan. In the circumstances, the Committee considers it unnecessary to separately examine the author's claim under this provision of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the Covenant, is of the view that the facts before it disclose a violation of article 7 and article 14, paragraph 3 (g) of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Dunaev with an effective remedy, including the payment of adequate compensation, initiation and pursuit of criminal proceedings to establish responsibility for the author son's ill-treatment, and a retrial, with the guarantees enshrined in the Covenant or release, of the author's son. The State party is also under an obligation to prevent similar violations in the future.

10. 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.]
