United Nations CCPR/C/118/D/2106/2011

International Covenant on Civil and Political Rights

Advance unedited version

Distr.: General
8 November 2016

Original: English

Human Rights Committee

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

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

[*] 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, Olivier de Frouville, Ahmet Amin Fathalla, 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.

1. The authors of the communication are Ms Valentina Kashtanova, a Russian Federation national and Ms Gulnara Slukina, a national of Uzbekistan. The first author submitted the communication on behalf of her son, V.S. and the second author submitted the communication on behalf of her nephew, hereafter V.L. The alleged victims are Uzbek nationals, born respectively on 6 October 1992 and 6 July 1993, who were serving prison sentences at the time of submission. They claimed that the latter are victims of violations by Uzbekistan of their rights under article 7, article 10, paragraph 1, article 14 and article 24, paragraph 1, of the International Covenant on Civil and Political Rights.[1] The authors are not represented by counsel.

The facts as presented 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 parents or attorneys. The authors also provided 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 Almalyka Prosecutors' office, again in the absence of attorneys or parents. On 20 August 2008, an attorney, a certain 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 interests since Mr.B. was a relative of the murder victim Vlasov, and since in 2006 he had acted as a defence attorney in another criminal case for Vlasov and for V.S. Mr.B. therefore refused to represent V.S. The investigating officer failed to inform V.S.'s parents about the recusal of his attorney; 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 submitted that during the pre-trial investigation the investigating officer "tortured" V.S. and V.L. in order to force them to make confessions: they were repeatedly beaten, refused food, not given warm clothing and denied visits of their families. The authors were allowed to visit the boys only once, in November 2008, after the preliminary investigation had been already concluded. They found that the boys were still wearing summer clothes- T-shirts and shorts- while the temperatures in the streets were -15 degrees 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 that V.S and V.L. had been subjected to, including: a complaint to the National Security Service, dated 26 May 2009, the General Prosecutor's office, dated 6 August 2009 and 26 January 2010, the request for supervisory review addressed to the President of the Supreme Court, dated 14 August 2009. V.S. received assistance only after he was transferred to the Tashkent prison. The investigating officer did not allow the authors to access the case files, claiming that that is the role of the attorney. The authors also submitted 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 procedure.

[1] The Optional Protocol entered into force for Uzbekistan on 28 December 1995.

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 ten minutes. The authors submitted that, in violation of the domestic legislation, the second instance court did not effectively review the case. The authors filed requests for supervisory review of the verdict (respectively 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 V.S. and V.L.'s right to defence. 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 in relation with an amnesty.[2] Based on the lawyer's confessions 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 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 re-trial 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 on him. The first author submitted that during the retrial only two witnesses were called and that these provided different testimonies from the ones given in 2008. The first author also submitted 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 submitted that the torture allegations were investigated and confirmed by the Uzbekistan's Ombudsman office, but that the Court did not take its 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 contended that all available and effective domestic remedies have been exhausted.

The complaint

3. The authors maintained that the pre-trial investigation and the trial itself were conducted with important breaches of procedural norms and of the victims' constitutional and procedural rights. The authors maintained that the rights of V.S. and V.L. under article 7, article 10, paragraph 1, article 14 and article 24, paragraph 1, of the Covenant had been violated.

[2] The authors provided a copy of a decision of the Almalyksky town court, dated 30 September 2010, deciding to terminate the proceedings against B. and another attorney on the occasion of an amnesty granted on the occasion of the national independence day.

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 in relation with the violations of the right to defence of V.S. Following an additional investigation he was convicted of the same charges to the same term of imprisonment. The State party further reiterated the content of the verdict and listed the evidence based on which V.S. and V.L. had been convicted.

4.2 The State party noted that the investigation and the first instance court had committed a significant violation of the requirements of article 79, paragraph 4 of the Criminal Procedure Code, in that an attorney, who previously had defended the alleged victim of the murder was allowed to act as a defender of V.L. Taking into consideration that the above violation is a ground 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 submitted that, according to the law, not ensuring the right to defence of a minor is a severe violation of the criminal procedure, which should result in revocation of all the court decisions on the case. In addition, the case of V.S. was not included in the request and in the Supreme Court's decision. The authors maintained that the 2010 verdict against V.S. was based on the testimony of the investigator, or testimonies of "inexistent" witnesses and that both verdicts were based on the same evidence, collected in violation of the criminal procedure rules. The aim of the review, just as the aim of the 2010 retrial of V.S., is according to the authors to reconfirm the verdict and to shield from responsibility the prosecutor and investigator guilty of violating the criminal procedure. The authors also maintained that the 2010 verdict against V.S. was issued in violation of the criminal procedure, because it was based on 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 ignored the request and returned for additional investigation only the case regarding V.L. They also submitted that, on 29 November 2011, the Prosecutor's office rejected their request to initiate criminal proceedings against a medical expert (name on file) who conducted an inadequate medical examination and then provided a false testimony during the trial against 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; therefore he committed a perjury. The Ministry of Health had established that the expert had 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 disciplinary punishment – rebuke.[3]

5.3 On 23 and 24 January 2012, the authors submitted that for one and a half years their complaints that an investigation against minors was conducted in the absence of 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 participated in the trial. They reiterated that even in that request the Prosecutor's office continued insisting that the guilt of V.S. had been fully proven. They maintained that the 2010 retrial of V.S. 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 appeal's instance confirmed the verdict on 22 December 2010. The authors described and contested the evidence that the court used in assessing the guilt of V.S.. The authors submitted that the 2011 request for supervisory review of the Prosecutor also stated that the guilt of V.L. had been established and maintained that his retrial will be as inefficient as the one for V.S.[4]

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 submitted 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 lack of technical possibility to do that. 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 9 years of imprisonment. The attorney of V.L. made an oral statement and provided a copy to the court, but in the verdict the judge stated that no statement was made by the defence. The authors described further evidence and alleged failure of the court to properly assess it and establish the innocence of V.L. They alleged that in the verdict she made reference to evidence that was not in fact presented during the hearings.[5] Even though the Supreme Court had recognised 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 submitted 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 claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

[3] 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.

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

[5] Copy of the verdict provided by the author's.

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

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 articles 14 of the Covenant had been violated, during the initial proceedings because the lawyer initially representing V.S. and V.L. had previously represented the murder victim in another criminal case and because during a criminal investigation in 2010 the above 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 violations the original verdicts against V.S. and V.L. had been 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 respectively on 19 November 2010 and on 26 March 2012. 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 above 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. 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.[6] 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 a possibility to make statements in presence of their lawyers and the judge. The Committee further notes that the courts in pronouncing the verdicts against V.S. and V.L. do not appear to have relied on the confessions made by them during the pre-trial investigation. Nor does it appear that allegations of coercion had been raised during the court proceedings. The Committee, therefore, considers that the authors have failed to provide sufficient substantiation of their claim of a violation of article 14 of the Covenant, and that the above 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 to their examination on the merits.

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

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: that during the pre-trial investigation the investigating officer tortured the alleged victims in order to force them to make confessions, that they were repeatedly beaten, refused food, not given warm clothing; that while in pre-trial 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 temperatures in the streets were -15 degrees 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 had complained regarding the above treatment to various authorities, including the Prosecutor's Office and the Supreme Court. The Committee notes that the State party has not refuted these 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.[7] 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.[8] In the absence of any explanation from the State party, the Committee has to give due weight to the authors' allegations.[9] 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.[10]

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 Almalyka Prosecutors' office, 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 these 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 35, which 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.[11] It further recalls that article 24, paragraph 1, of the Covenant entitles every child "to such measures of protection as are

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

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

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

[10] See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (art. 14), para. 60, and communication No. 1401/2005, *Kirpo v. Tajikistan*, Views adopted on 27 October 2009, para. 6.3.

[11] See 1402/2005, *Krasnova v. Kyrgyzstan*, Views adopted on 29 March 2011 , para. 8.5; General Comment No. 32, para. 42; see Committee on the Rights of the Child, General Comment No. 10, para. 48.

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.[12] The Committee therefore considers that the State party has also violated article 24, paragraph 1, in respect of V.S. and V.L., who, as minors, should have been afforded special protection.[13]

9. The Committee, acting under article 5 (4) of the Optional Protocol to the Covenant, is of the view that the State party has violated 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 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 occurring 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 or not 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 its Views. The State party is also requested to publish the Committee's Views, to translate them into the official language, in an accessible format, and to widely disseminate them.

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[12] See General Comment No. 17, para. 1; General Comment No. 32, paras. 42-44.

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