

OPINION No. 32/2000 (UZBEKISTAN)

Communication addressed to the Government on 8 March 2000

Concerning Makhbuba Kasymova

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work the Working Group forwarded the above-mentioned communication to the working Government.
2. The Working Group regrets that the Government has not replied despite the extension of the 90-day grace period it had requested and obtained from the Working Group.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of proceedings or a sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial non-observance of international standards relating to a fair trial, as set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group would like to have received the cooperation of the Government. In the absence of any information emanating from the Government, the Working Group considers that it is in a position to render an opinion on the facts and circumstances of the case, all the more so since the facts and allegations contained in the communication have not been disputed by the Government.
5. According to the source, on 12 May 1999, a group of plainclothes officers of the Yununsobad district of the Tashkent City Police entered the flat of Ms. Makhbuba Kasymova, a human rights defender, and searched it although she was not there at the time. Ms. Kasymova is one of a small group of human rights defenders who monitored the wave of arrest and trials

which followed a series of bomb explosions in Tashkent in February 1999 and the murders of officials in the Fergana valley in late 1997. The officers questioned her husband, two of her daughters and one Ravshan Khamidov who was staying in the flat. The latter was detained after a hand grenade and a small quantity of drugs were allegedly found. No warrant was shown, nor did the officers reveal their identity, as required under the law.

6. In the days following the search of her home, Ms. Kasymova was repeatedly questioned in the City Internal Affairs Department (GUVD). On several occasions, the interrogations lasted for many hours without a break and ended late at night. On 19 May 1999, she was taken under guard directly from the office of the GUVD to the assembly hall of her local neighbourhood council (*mahallya*), where some 200 people had gathered to denounce her publicly, it is reported that Ms. Kasymova was pointed out to them as “one of the sort of people who killed your sons”. Excerpts of this meeting were allegedly shown on national television and Ms. Kasymova and her (unregistered) Independent Human Rights Organization of Uzbekistan (NOPCHU) were presented as being supporters of terrorism.

7. Shortly after this “show trial”, Ms. Kasymova was formally charged with concealing a crime. She remained at liberty, on bail. In early June 1999, while the criminal investigation was still under way, an additional charge of misappropriation of money was brought against Ms. Kasymova. It remains unclear from the court documents whether this related to a loan arrangement between Ms. Kasymova and one of her neighbours, or to a sum of money handed over by the same neighbour, or to a sum of money handed over by the same neighbour for the legal defence of an imprisoned relative.

8. On 13 July 1999, Ms. Kasymova attended Yunusobod District Court. She had not been informed that her trial was imminent and thus had not yet engaged a lawyer; however, she brought with her to the court building the Human Rights Watch representative in Uzbekistan. The trial against Ms. Kasymova began forthwith, without prior notice, in the absence of any defence witness and with a lawyer assigned by the court. Three hours later, the proceedings concluded with the handing down of a five-year sentence for concealment of a crime and for misappropriation of funds (four years under article 241 and three years under article 168 of the Uzbek Criminal Code). Ms. Kasymova was immediately transferred to Tashkent City Prison.

9. On 17 August 1999, the Tashkent City Court heard Ms. Kasymova’s appeal against her conviction and sentence. The appeal ground advanced by her lawyer was that no evidence had been adduced that any crime had occurred. After 14 minutes, the appeal was dismissed. Ms. Kasymova’s lawyer has indicated that he intends to appeal to the Supreme Court. Ms. Kasymova is currently held in a corrective labour colony for women in Tashkent. She allegedly suffers from a heart condition.

10. On the basis of the allegations made, which the Government has not denied although it has been given the opportunity to do so, the Working Group notes that the conviction and detention of Ms. M. Kasymova were motivated exclusively by her human rights activities, whereas in acting as she did she was only peacefully exercising the right to freedom of expression, as guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights.

11. In view of the above, the Working Group is of the opinion that an analysis of the irregularities of the legal proceedings preceding Ms. Kasymova's final conviction is unnecessary, although the source sees those proceedings as violations of international norms, notably articles 9 and 14 of the Covenant.

12. In the light of the foregoing, the Working Group renders the following opinion:

Makhbuba Kasymova's deprivation of liberty is arbitrary in that it contravenes the provisions of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of cases before the Working Group.

Adopted on 27 November 2000