



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-second session
18 October - 5 November 2004

VIEWS

Communication No. 931/2000

<u>Submitted by:</u>	Ms. Raihon Hudoyberganova (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	15 September 1999 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 91 decision, transmitted to the State party on 24 May 2000 (not issued in document form).
<u>Date of adoption of Views:</u>	5 November 2004

On 5 November 2004, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 931/2000. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

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

Eighty-second session

concerning

Communication No. 931/2000*

<u>Submitted by:</u>	Ms. Raihon Hudoyberganova (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	15 September 1999 (initial submission)

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

Meeting on 5 November 2004,

Having concluded its consideration of communication No. 931/2000, submitted to the
Human Rights Committee by Ms. Raihon Hudoyberganova, 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:

* The following members of the Committee participated in the examination of the present
communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Franco
Depasquale, Mr. Maurice Glèlè Ahanhango, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah,
Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito
Solari-Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

The texts of three individual opinions signed by Committee members Mr. Hipólito
Solari-Yrigoyen, Sir Nigel Rodley and Ms. Ruth Wedgwood are appended to the present
document.

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Raihon Hudoyberganova, an Uzbek national born in 1978. She claims to be a victim of violations by Uzbekistan of her rights under articles 18 and 19 of the International Covenant on Civil and Political Rights¹. She is not represented by counsel.

The facts as presented by the author

2.1 Ms. Hudoyberganova was a student at the Farsi Department at the Faculty of languages of the Tashkent State Institute for Eastern Languages since 1995 and in 1996 she joined the newly created Islamic Affairs Department of the Institute. She explains that as a practicing Muslim, she dressed appropriately, in accordance with the tenets of her religion, and in her second year of studies started to wear a headscarf ("hijab"). According to her, since September 1997, the Institute administration began to seriously limit the right to freedom of belief of practicing Muslims. The existing prayer room was closed and when the students complained to the Institute's direction, the administration began to harass them. All students wearing the hijab were "invited" to leave the courses of the Institute and to study at the Tashkent Islamic Institute instead.

2.2 The author and the concerned students continued to attend the courses, but the teachers put more and more pressure on them. On 5 November 1997, following a new complaint to the Rector of the Institute alleging the infringement of their rights, the students' parents were convoked in Tashkent. Upon arrival, the author's father was told that Ms. Hudoyberganova was in touch with a dangerous religious group which could damage her and that she wore the hijab in the Institute and refused to leave her courses. The father, due to her mother serious illness, took his daughter home. She returned to the Institute on 1 December 1997 and the Deputy Dean on Ideological and Educational matters called her parents and complained about her attire; allegedly, following this she was threatened and there were attempts to prevent her from attending the lectures.

2.3 On 17 January 1998, she was informed that new regulations of the Institute have been adopted, under which students had no right to wear religious dress and she was requested to sign them. She signed them but wrote that she disagreed with the provisions which prohibited students from covering their faces. The next day, the Deputy Dean on Ideological and Educational matters called her to his office during a lecture and showed her the new regulations again and asked her to take off her headscarf. On 29 January the Deputy Dean called the author's parents and convoked them, allegedly because Ms. Hudoyberganova was excluded from the students' residence. On 20 February 1998, she was transferred from the Islamic Affairs Department to the Faculty of languages. She was told that the Islamic Department was closed, and that it was possible to re-open it only if the students concerned ceased wearing the hijab.

¹ The International Covenant on Civil and Political Rights entered into force for the State party on 1 September 1991 - date of its independence from the USSR, and the Optional Protocol entered into force for the State party on 28 September 1995 (accession).

2.4 On 25 March 1998, the Dean of the Farsi Department informed the author of an Order by which the Rector had excluded her from the Institute. The decision was based on the author's alleged negative attitude towards the professors and on a violation of the provisions of the regulations of the Institute. She was told that if she changed her mind about the hijab, the order would be annulled.

2.5 As to the exhaustion of domestic remedies, the author explains that on 10 March 1998, she wrote to the Ministry of Education, with a request to stop the infringement of the law in the Institute; allegedly, the result was the loss of her student status on 15 March 1998. On 31 March 1998, she filed a complaint with the Rector, claiming that his decision was illegal. On 13 April 1998, she complained to the Chairman of the Committee of Religious Affairs (Cabinet of Ministers); on 22 April 1998, the Chairman advised her to respect the Institute's regulations. On 14 April 1998, she wrote to the Spiritual Directorate of the Muslims in Uzbekistan, but did not receive "any written reply". On 3 March and 13 and 15 April 1998, she wrote to the Minister of Education and on 11 May 1998, she was advised by the Deputy Minister to comply with the regulations of the Institute.

2.6 On 15 May 1998, a new law "On the Liberty of Conscience and Religious Organisations" entered into force. According to article 14, Uzbek nationals cannot wear religious dress in public places². The administration of the Institute informed the students that all those wearing the hijab would be expelled.

2.7 On 20 May 1998, the author filed a complaint with the Mirabadsky District Court (Tashkent), requesting to have her student rights restored. On 9 June 1998, the legal counsel of the Institute requested the court to order the author's arrest on the ground of the provisions of article 14 of the new law. Ms. Hudoyberganova's lawyer objected that this law violated human rights. According to the author, during the court's sitting on 16 June, her lawyer called on her

²Article 1 of the law read as follows: "Article 1. The aim of the present law is to ensure the right of every person to freedom of worship and religion, and the citizens equality irrespective of their religious convictions, and to regulate relations arising from religious organizations' activity".

Article 14 reads as follows: "Article 14. Religious rites and ceremonies Religious organizations have a right to create and maintain facilities for free worship and carrying out religious rites, and to maintain pilgrimage sites. Worship, religious rites and ceremonies shall be exercised at a religious organization's premises, prayer buildings and other properties belonging to the organization, at pilgrimage sites, cemeteries, and in cases of ritual necessity and at citizens' will at home. Worship and religious rites can be exercised in hospitals, nursing homes, detention centers, prisons and labour camps at the request of the people staying there. Public worship and religious rites can be held outside religious buildings in the order established by the law of the Republic of Uzbekistan. Citizens of the Republic of Uzbekistan (except religious organization's ministers) cannot appear in public places in religious attire. Religious organizations cannot subject believers to compulsory payment of money, or taxation, and to actions insulting their honour and dignity".

behalf the lawyer of the Committee of Religious Affairs, who testified that the author's dresses did not constitute a cult dress.

2.8 On 30 June 1998, the Court dismissed the author's claim, allegedly on the ground of the provisions of article 14 of the Law on Freedom of Conscience and Religious Organizations. According to the author, the Institute provided the court with false documents to attest that the administration had warned her that she risked expulsion. The author then requested the General Prosecutor, the deputy Prime-Minister, and the Chairman of the Committee of Religious Affairs, to clarify the limits of the terms of "cult" (religious) dress, and was informed by the Committee that Islam does not prescribe a specific cult dress.

2.9 On 15 July 1998, the author filed an appeal against the District's court decision (of 30 June 1998) in the Tashkent City Court and on 10 September, the City Court upheld the decision. At the end of 1998 and in January 1999, she complained to the Parliament, to the President of the Republic, and to the Supreme Court; the Parliament and the President's administration transmitted her letters to the Supreme Court. On 3 February 1999 and on 23 March 1999, the Supreme Court informed her that it could find no reasons to challenge the courts' decisions in her case.

2.10 On 23 February 1999, she complained to the Ombudsman, and on 26 March 1999 received a copy of the reply to the Ombudsman of the Institute's Rector, where the Rector reiterated that Ms. Hudoyberganova constantly violated the Institute's regulations and behaved inappropriately with her professors, that her acts showed that she belonged to an extremist organisation of Wahabits, and that he had no reason to readmit her as student. On 12 April 1999, she complained to the Constitutional Court and was notified that it had no jurisdiction to deal with her case and that her claim had been channelled to the General Prosecutor's Office, which had forwarded it to the Tashkent Prosecutor's Office. On 30 June 1999, the Tashkent Prosecutor's Office informed her that there were no reasons to annul the court's rulings in her case. On 1 July 1999, she complained again to the General Prosecutor with a request to have her case examined. She received no reply.

The complaint

3. The author claims that she is a victim of violations of her rights under articles 18 and 19 of the Covenant, as she was excluded from University because she wore a headscarf for religious reasons and refused to remove it.

State party's observations

4.1 On 24 May 2000, 26 February 2001, 11 October 2001, and 3 September 2004, the State party was requested to submit to the Committee information and comments on the admissibility and merits of the communication. The State party presented its comments on 21 October 2004. It recalls that on 21 May 1998, the author applied to the Mirabad District Court of Tashkent with a request to acknowledge the illegality of her dismissal from the Tashkent State Institute of Eastern Languages and to restore her as a student. On 30 June 1998, the Mirabadsky District Court dismissed her appeal.

4.2 The State party explains that according to the Court's civil case, it transpired that the author was admitted in the Faculty of Languages in the Institute in 1995, and in 1996 she continued her studies in the Faculty of History (Islamic Department). According to paragraph 2 (d) of the Internal Regulations (regulating the rights and obligations of the Institute's students), in the Institute, students are forbidden to wear clothes "attracting undue attention", and forbidden to circulate with the face covered (with a hijab). This regulation was discussed at a general meeting of all students on 15 January 1998. The author was presented the text and she made a note that she disagrees with the requirements of paragraph 2 (d). On 26 January 1998, the Dean of the Faculty of History warned her that she violated the provisions of paragraph 2 (d), of the Institute's regulations. The author refused to sign the warning and a record in this respect was made on 27 January 1998.

4.3 On 10 February 1998, by order of the Dean of the Faculty of History, the author was reprimanded for infringement of the Internal Regulations. By order of the Rector of the Institute of 16 March 1998, Ms. Hudayberganova was excluded from the Institute. The order was grounded on the "rough immoral attitude toward a teacher and infringement of the internal regulations of the Institute, after numerous warnings". According to the State party, no cassation appeal was introduced against this decision. Her claim under the supervisory procedure (nadzornaya zhaloba) gave no result.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

5.2 The Committee notes that the same matter is not being examined under any other international procedure and that domestic remedies have been exhausted. [No challenge from the State party to this conclusion has been received.] The requirements of article 5, paragraph 2 (a) and (b), of the Optional Protocol have thus been met.

5.3 The Committee has noted that the author has invoked article 19, of the Covenant, without however providing specific allegations on this particular issue, but limited herself to the mere enumeration of the above article. Therefore, the Committee concludes that the author has not substantiated this claim, for purposes of admissibility, and that this part of the communication is inadmissible under article 2 of the Optional Protocol.

5.4 As to the author's remaining claims under article 18 of the Covenant, the Committee considers that it has been sufficiently substantiated for purposes of admissibility, and decides to proceed to its examination on the merits.

Examination of the merits

6.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it, as required under article 5, paragraph 1, of the Optional Protocol.

6.2 The Committee has noted the author's claim that her right to freedom of thought, conscience and religion was violated as she was excluded from University because she refused to remove the headscarf that she wore in accordance with her beliefs. The Committee considers that the freedom to manifest one's religion encompasses the right to wear clothes or attire in public which is in conformity with the individual's faith or religion. Furthermore, it considers that to prevent a person from wearing religious clothing in public or private may constitute a violation of article 18, paragraph 2, which prohibits any coercion that would impair the individual's freedom to have or adopt a religion. As reflected in the Committee's General Comment No. 22 (para.5), policies or practices that have the same intention or effect as direct coercion, such as those restricting access to education, are inconsistent with article 18, paragraph 2. It recalls, however, that the freedom to manifest one's religion or beliefs is not absolute and may be subject to limitations, which are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others (article 18, paragraph 3, of the Covenant). In the present case, the author's exclusion took place on 15 March 1998, and was based on the provisions of the Institute's new regulations. The Committee notes that the State party has not invoked any specific ground for which the restriction imposed on the author would in its view be necessary in the meaning of article 18, paragraph 3. Instead, the State party has sought to justify the expulsion of the author from University because of her refusal to comply with the ban. Neither the author nor the State party have specified what precise kind of attire the author wore and which was referred to as "hijab" by both parties. In the particular circumstances of the present case, and without either prejudging the right of a State party to limit expressions of religion and belief in the context of article 18 of the Covenant and duly taking into account the specifics of the context, or prejudging the right of academic institutions to adopt specific regulations relating to their own functioning, the Committee is led to conclude, in the absence of any justification provided by the State party, that there has been a violation of article 18, paragraph 2.

7. 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 18, paragraph 2, of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Ms. Hudoyberganova with an effective remedy. The State party is under an obligation to take measures to prevent similar violations in the future.

9. 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 90 days, information about the measures taken to give effect to the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Individual opinion (dissenting) by Committee member Mr. Hipolito Solari-Yrigoyen

My dissenting opinion regarding this communication is based on the following grounds:

In order to comply with the provisions of article 5, paragraph 1, of the Optional Protocol, the communication should be studied in the light of all the information supplied by the parties. In the present case, it is the author who has provided most of the information, although her statements fail to underpin her own allegations, and even contradict them.

According to the author (para. 2.4), she was excluded from the Tashkent State Institute for Eastern Languages by the Rector, after numerous warnings, on the following grounds:

1. Her negative attitude towards the teaching staff;
2. Her infringement of the regulations of the Institute.

Regarding her negative attitude towards the teachers, the decision of Mirabad district court revealed that the author had accused one of the teachers of bribery, claiming that he was offering pass marks in examinations in return for money. According to the State party (para. 4.3), she was excluded because of her “rough immoral attitude toward a teacher”. The author has not supplied any information to justify her serious accusation against the teacher which would nullify the initial ground given for her expulsion. Nor has she explained any link between this ground for exclusion and the alleged violation of article 18 of the Covenant.

Regarding the infringement of the regulations of the Institute, which did not permit the wearing of religious clothing on Institute premises, the author states that she disagreed with the provisions because they “prohibited students from covering their faces” (para. 2.3). The State party points out that the internal regulations forbid students to wear clothes “attracting undue attention”, and to circulate with the face covered (para. 4.2). Although the author and the State party do not specify which type of clothing the author was wearing, she states that she dressed “in accordance with the tenets of her religion”. However, the author herself states that she complained to the Chairman of the Committee of Religious Affairs (Cabinet of Ministers), who “informed [her] that Islam does not prescribe a specific cult dress” (para. 2.8). The author has not rebutted this assertion, which she herself passed on.

Regarding the regulations of the university institute, it is necessary to bear in mind that academic institutions have the right to adopt specific rules to govern their own premises. It should also be added that these regulations applied to all students without exception, since the institution involved was a State institute of education, not a place of worship, and one in which the freedom to exercise one’s own religion is subject to the need to protect the fundamental rights and freedoms of others, that is, religious freedom for all, safeguarded by the guarantee of equality before the law, whatever the religious convictions or beliefs of each individual student. It is not appropriate to request the State party to provide specific grounds for the restriction complained of by the author, since the regulations applied impose general rules on all students, and there is no restriction imposed on her alone or on the adherents of one religion in particular. Furthermore, the exclusion of the author, according to her own statements, arose from more

complex causes, and not only the religious clothing she wore or her demand to cover her face within the Institute.

For the reasons set out and in the light of the information supplied, I conclude that the author has not substantiated any of her allegations that she was victim of a violation of article 18 of the Covenant.

In accordance with article 5, paragraph 4, of the Optional Protocol, I consider that the facts in the present case do not reveal any violation of articles 18 and 19 of the Covenant.

[*Signed*] Hipólito Solari-Yrigoyen

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Individual opinion by Committee member Sir Nigel Rodley

I agree with the finding of the Committee and with most of the reasoning in paragraph 6.2. I feel obliged, however, to dissociate myself from one assertion in the final sentence of that paragraph, in which the Committee describes itself as 'duly taking into account the specifics of the context'.

The Committee is right in the implication that, in cases involving such 'clawback' clauses as those contained in articles 12, 18, 19, 21 and 22, it is necessary to take into account the context in which the restrictions contemplated by those clauses are applied. Unfortunately, in this case, the State party did not explain on what basis it was seeking to justify the restriction imposed on the author. Accordingly, the Committee was not in a position to take any context into account. To assert that it has done so, when it did not have the information on the basis of which it might have done so, enhances neither the quality nor the authority of its reasoning.

[*Signed*] Sir Nigel Rodley

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Individual opinion by Committee member Ms. Ruth Wedgwood

The facts of this case remain too obscure to permit a finding of violation of the Covenant. The author has complained to the Committee that she was prevented from wearing a “hijab” as a student at the Tashkent State Institute in Uzbekistan. “Hijab” is often rendered in translation as “head scarf” and may be nothing more than a scarf covering the hair and neck. But the author also wrote in her protest to the deans at the Tashkent Institute that she “disagreed with the provisions which prohibited students from covering their faces.” Paragraph 2.3. The State party states that under Institute regulations, students are “forbidden to circulate with the face covered (with a hijab).” Paragraph 4.2.

Without further clarification of the facts by the author, it would thus seem that the manifestation of religious belief at issue in this case may involve the complete covering of a student’s face in the setting of a secular educational institution. State parties have differed in their practice. Some countries permit any form of religious dress, including the covering of faces, accommodating women who otherwise would find it difficult to attend university. Other states parties have concluded that the purposes of secular education require some restrictions on forms of dress. A university instructor, for example, may wish to observe how a class of students is reacting to a lecture or seminar, or to establish eye contact in asking and responding to questions.

The European Court of Human Rights recently concluded that a secular university could restrict women students in the use of a traditional hijab, consisting of a scarf covering the hair and neck, because of the “impact” on other women students. See *Leyla Sahin v. Turkey*, No. 44774/93, decided 29 June 2004. The Court asserted that the “rights and freedoms of others” and the “maintenance of public order” were implicated, because a particular garb might cause other persons of the same faith to feel pressure to conform. The European Court observed that it “did not lose sight of the fact that ... extremist political movements in Turkey” sought “to impose on society as a whole their religious symbols and conception of a society founded on religious precepts.”

Such interference with the manifestation of personal religious belief is problematic. But a state may be allowed to restrict forms of dress that directly interfere with effective pedagogy, and the covering of a student’s face would present a different set of facts. The uncertain state of the record in this case does not provide the basis for adequate consideration of the issue, or even for a *sui generis* finding of violation.

[Signed] Ruth Wedgwood

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee’s annual report to the General Assembly.]
