



**International Covenant on
Civil and Political Rights**

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Views

Communication No. 1449/2006

<u>Submitted by:</u>	Indira Umarova (represented by counsels Bartram Brown and Geoffrey Baker)
<u>Alleged victim:</u>	Sanjar Giyasovich Umarov
<u>State Party:</u>	Uzbekistan
<u>Date of communication:</u>	20 January 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 16 February 2006 (not issued in document form)
<u>Date of adoption of Views:</u>	19 October 2010

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Torture/ cruel, inhuman and degrading treatment/ arbitrary detention/ access to lawyer/ fair trial/unlawful interference with privacy, family, home, correspondence/ freedom of information/ discrimination
<i>Substantive issues:</i>	Degree of substantiation of claims
<i>Procedural issues:</i>	None
<i>Articles of the Covenant:</i>	Articles 7, 9.1, 9.3, 9.4, 10.1, 17, 19.2, 26 and 2
<i>Articles of the Optional Protocol:</i>	2

On 19 October 2010 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. 1449/2006.

[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 (one hundred session)

concerning

Communication No. 1449/2006**

Submitted by: Indira Umarova (represented by counsels Bartram Brown and Geoffrey Baker)

Alleged victim: Sanjar Giyasovich Umarov

State Party: Uzbekistan

Date of communication: 20 January 2006 (initial submission)

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

Meeting on 19 October 2010,

Having concluded its consideration of communication No. 1449/2006, submitted to the Human Rights Committee on behalf of Mr. Sanjar Giyasovich Umarov 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 Indira Umarova, an Uzbek national. She submits the communication on behalf of her husband, Sanjar Giyasovich Umarov, also an Uzbek national, born in 1956, following his detention at the Tashkent Prison Facility in Tashkent, Uzbekistan. The author claims her husband to be a victim of violations of article 7, article 9, paragraphs 1, 3, and 4, article 10, paragraph 1, article 17, article 19, paragraph 2, article 26, and article 2 of the International Covenant on Civil and Political Rights. The author is represented by counsels, Mr. Bartram Brown and Mr. Geoffrey Baker.

1.2 Following a 14 April 2006 request of the author, on 18 April 2006, the Committee's Special Rapporteur for New Communications and Interim Measures, pursuant to Rule 92 of the Committee's rules of procedure, requested the State party to adopt all necessary

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanut, Mr. Mahjoub El Haiba, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

measures to protect Mr. Umarov's life, safety and personal integrity, in particular by providing him with the necessary and appropriate medical care and by abstaining from administering any drugs detrimental to his mental or physical health, so as to avoid irreparable harm to him, while the case was under consideration of the Committee.

Facts as presented by the author

2.1 The author's husband is a businessman living in Tashkent, Uzbekistan and a part-time resident of the United States. In March and April of 2005, along with other concerned citizens and leaders of various social, democracy and human rights organizations, he established the political formation Sunshine Coalition of Uzbekistan. The purpose of the Sunshine Coalition was to assist and work towards the development of peaceful and democratic reform programmes.

2.2 On 27 July 2005, the Sunshine Coalition of Uzbekistan registered with the Ministry of Justice. In July, 2005, the Prosecutor's Office of Uzbekistan (Прокуратура Республики Узбекистана), the tax commission and other bodies began investigations into the companies operated by the leaders of the Sunshine Coalition. Many members and supporters of the Sunshine Coalition, relatives and individuals associated with companies affiliated with the author's husband and his family, were forced to seek asylum outside of Uzbekistan for fear of arrest and prosecution by the State party's authorities.

2.3 On 11 August 2005, the author's husband filed a libel suit against the Tashkent Weekly Zerkalo XXI for publication of an article that slandered his honor, dignity and business reputation. The Zerkalo XXI belongs to the state owned publishing house, which prints school textbooks. On 18 October 2005, the author's husband attended a hearing related to the libel suit against Zerkalo XXI.

2.4 On the evening of 22 October 2005, the Tashkent Police raided the offices of the Sunshine Coalition, seized documents, files, computer disks, and records, and ransacked the offices. At approximately 1:00 am on 23 October 2005, the author's husband came to the office to investigate, and was immediately taken into custody. He was taken to Tashkent City Department of Internal Affairs (ГУВД города Ташкента) and put in an isolated temporary holding cell in the basement of the building, where he was kept for 19 days. He was charged with embezzlement related to an oil company in which he formerly had an ownership interest and with grand larceny.

2.5 On 25 October 2005, Mr. Umarov's lawyer arrived at the police department for his interrogation, but realized on arrival that the interrogation could not take place as the author's husband showed signs of deteriorating health, psychiatric problems or hypertension, was naked on the floor of the cell, and his face was covered with his hands while he rocked back and forth. Mr. Umarov, who had known his lawyer previously, did not react to his presence and only muttered unintelligible words.

2.6 On the same day and while still in the building, Mr. Umarov's lawyer filed an official petition requesting a medical examination by court order and to be notified of the results of the examination, since he suspected that psychotropic drugs had been forcibly administered to his client. He was not contacted about his client's condition for many days and his repeated requests for information were ignored. On 26 October 2005, Mr. Umarov's lawyer wrote to the Senior Investigator of the Department for Fight with Economic Crimes and corruption (Управления по борьбе с экономическими преступлениями и коррупцией) of the General Prosecutor's office requesting again a medical-psychiatric examination of his client and the permission to be present while the examination was conducted. He did not receive an answer. On 28 October 2005, M. Umarov's lawyer filed a complaint with the Head of the Tashkent Department of Internal Affairs demanding a response in writing to his request for a judicial psychiatric evaluation of his client. On 28

October 2005, the lawyer also filed a petition to the Head of the Department for Fight with Economic Crimes of the General Prosecutor's Office, which contained a request for a meeting with the author's husband, access to documents related to the case and notification of the results of a psychiatric examination. On 1 November 2005, Mr. Umarov's lawyer filed a complaint with the General Prosecutor of the Republic of Uzbekistan asking for a personal meeting with the accused, requesting that his client's rights be upheld and demanding information in regard to the basis of the latter's arrest and detention.

2.7 On 2 November 2005, Mr. Umarov's lawyer was allowed to meet with him. During the meeting the latter complained of severe headaches, nausea, fever and faintness, and high blood pressure. He was wearing the same clothes that he had when arrested and had not been given any elementary personal hygiene items such as soap, toothpaste or comb. Upon the lawyer's request, a paramedic examined the author's husband and detected that his blood pressure was 140/100.

2.8 On 3 November 2005, the Organization for Security and Cooperation in Europe. (OSCE) issued a Statement No. 576 regarding the arrest and detention of Mr. Umarov, and expressed concern over his treatment. On 4 November 2005, the United States Mission to the OSCE raised its concern over the "arrest, detention, and possible abuse of [the author's husband]..." On 8 November 2005, the European Union issued a Statement expressing alarm at the reports regarding the "unacceptable conditions" in which the author's husband was held.

2.9 On 6 November 2005, the author filed another petition with the General Prosecutor, stating concerns about her husband's health, requesting a medical examination and asking that he be released pending the trial in a view of his deteriorating condition. On 7 November 2005, during a medical examination of the author's husband, based upon his lawyer request, it was noted that his blood pressure was 150/90. The medics conducted a cardiogram, but did not perform any other medical tests and did not conduct a full evaluation of the author's husband's health condition. On 14 November 2005, during an interrogation, the author's husband had another crisis and an "emergency" medic had to be summoned to attend to him. The author's husband received medical treatment, consisting of one shot of painkillers and a sedative. On 15 November 2005, Mr. Umarov's lawyer filed a petition to require the investigators to conduct a "standard medical evaluation of the overall health" of the author's husband.

2.10 On 7 November 2005, the Head of the Department for Fight with Economic Crimes of the General Prosecutor's Office sent a letter to Mr. Umarov's lawyer in response to his petitions and complaints, in which he stated that the author's husband had refused legal assistance in writing, that on 25 October 2005, he had violated the internal order in the detention facility by removing all his clothes and throwing them out of the cell and that he had simulated psychiatric illness. The letter stated that the lawyer was permitted to visit Mr. Umarov on 25 October, despite the fact that the latter had refused legal assistance, and that during that meeting the author's husband had stated that he does not know the lawyer and requested the investigator not to bring any lawyer without his explicit request. The letter also stated that, as far as the Prosecutor's Office was concerned, it was only from 2 November that Mr. Umarov's lawyer was officially acting on his behalf, following an authorization issued by his wife and son.

2.11 On 9 November 2005, Mr. Umarov's lawyer filed a statement with the General Prosecutor of the Republic, challenging and refuting the statements made in this letter. In particular, the lawyer specified that Mr. Umarov had not refused all legal assistance, but rather that of a Mr. Shodiev, who was recommended to him by the investigating officers. He maintained that his client was denied the right to contact his relatives and a lawyer of his choice.

2.12 On 12 November 2005, after being held for nineteen days in a temporary holding cell in the basement of the Tashkent City Police Department, Mr. Umarov was transferred to the Tashkent City Jail.

2.13 On 18 November 2005, the author sent to the General Prosecutor a letter complaining about the treatment of her husband, noting that he had never shown signs of bad health prior to his arrest and that his current condition was the result of the treatment while in police custody. On 21 November 2005, she sent a letter to the President of the Republic requesting the protection of her husband's constitutional rights.

2.14 On 22 November 2005, the Senior Investigator denied the petitions for examination of Mr. Umarov's medical condition. On 28 November 2005, Mr. Umarov told his lawyers that he had requested for medical attention on five (5) occasions, and that his requests were ignored each time. All the oral petitions and written complaints calling upon the authorities to conduct a proper medical examination to evaluate Mr. Umarov's health condition were dismissed.

2.15 On 2 December 2005, Mr. Umarov's lawyers filed a petition requesting that he be released on bail pending trial for health reasons in view of the fact that he had no previous criminal record and had never attempted to avoid judicial proceedings. On 7 December 2005, the lawyers again wrote to the General Prosecutor complaining that on several occasions they had been denied access to their client by the investigating officers.

2.16 On 6 March 2006, the author's husband was sentenced to 14 years and 6 months imprisonment and prohibition to engage in economic activities for five years, for crimes under Articles 167, 184 and 209 of the Criminal Code of Uzbekistan.

The complaint

3.1 On the issue of exhaustion of domestic remedies, the author submits that numerous attempts have been made to remedy the abovementioned violations including petitions and complaints made by Mr. Umarov's lawyers. Nevertheless, the violations persisted. This continues to cause unreasonable delay and irreparable harm and prevents the author's husband from exhausting domestic remedies. In particular, the author submits that, as may be observed from prior case law, domestic remedies in Uzbekistan do not offer a real possibility of remedying the infringement of article 9, paragraph 3, of the Covenant. Mr. Umarov's arrest occurred on 23 October 2005, and by 20 January 2006 he still had not been brought before a judge.¹

3.2 According to the author, the State party has consistently delayed each step in the processing of this case. The author invokes the State party's history before the Human Rights Committee, which according to her presents further evidence that exhaustion of remedies will cause undue delay and irreparable harm to the author's husband. In the four complaints brought before the Committee² against the State party, the latter did not respond to the Committee's requests. Moreover, the government of Uzbekistan subsequently has not undertaken to ensure to individuals within its territory or subject to its jurisdiction the rights

¹ The author refers to *Abdumalik Nazarov v. Uzbekistan*, Communication No. 911/2000, where the Committee found that detention for a period as short as five days without being presented before a judge discloses a violation of Article 9.3. In that case, Mr. Nazarov attempted to exhaust all domestic remedies, but found no remedy available for this violation. Similarly, the author is unable to find a domestic remedy for a violation of Article 9.3.

² The author refers to *Arutyuniantz v. Uzbekistan*, Communication No. 971/2001 (2005); *Hudoyberganova v. Uzbekistan*, Communication No. 931/2000 (2004); *Nazarov v. Uzbekistan*, Communication No. 911/2000 (2004); *Arutyunyan v. Uzbekistan*, Communication No. 797/1998 (2004).

recognized in the ICCPR and to provide an effective and enforceable remedy in case of a violation. To ask the author's husband to exhaust all domestic remedies will cause him similar irreparable damage as occurred in each of the prior complaints: loss of years of his life, loss of time with his family, loss of freedom and loss of health.

3.3 The author claims that the State party has violated article 7, article 9, paragraphs 1, 3 and 4, article 10, paragraph 1, article 17, article 19, paragraph 2 and article 26, and, therefore, article 2 of the Covenant.

3.4 She claims that the State party violated article 7 of the Covenant, as her husband was subjected to torture and cruel, inhuman and degrading treatment. He was held naked without provision of elementary personal hygiene items for several days. During this time, he displayed effects of having been administered psychotropic drugs.

3.5 The author claims a violation of article 9, paragraph 1, of the Covenant, for arbitrary detention since her husband was held in a temporary holding cell for nineteen days in violation of the domestic Criminal Rules of Procedure, which requires transfer from a temporary holding cell within a period of 72 hours.

3.6 The author claims a violation of article 9, paragraph 3, of the Covenant, since her husband was held in detention for more than of two months since 23 October 2005.³ He has not been given the option of release with guarantee of appearance at trial. The State party has not taken any steps to move this case towards trial, aside from formally charging him. The author's husband was held without a real opportunity to speak with his lawyer for eleven days, from 23 October 2005 until 2 November 2005. While his lawyer was allowed a visit on 25 October, the author's husband was physically unable to communicate with him at that time due to the ill-treatment he received during his detention.⁴ The denial of communication between Mr. Umarov and his lawyer during this critical time adversely affected his right to a fair trial.

3.7 The author claims a violation of article 9, paragraph 4, of the Covenant, as the State party denied her husband the right to take proceedings before a court challenging the lawfulness of his detention. He was prevented from challenging the lawfulness of his detention while being detained since he was unable to communicate with his lawyer until 2 November 2005.

3.8 The author claims a violation of article 10, paragraph 1, of the Covenant, as her husband was held in a holding cell with no clothing, no personal hygiene items and no bed for several days. At the time of his lawyer's first visit, Mr. Umarov was naked and incoherent on the floor of his cell. Consequently, the lawyer was unable to sustain any form of communication with him. The author's husband's poor condition, resulting from the ill-treatment received during his detention, rendered him unable to effectively communicate with the lawyer. Upon witnessing Mr. Umarov's condition in the holding cell, his lawyer immediately requested medical attention. The fulfillment of this request was unnecessarily delayed for many days by the State party's authorities.

3.9 The author claims that the State party has engaged in a pattern of targeted arrests and persecution of political dissidents as noted in statements issued by the European Union and the OSCE. The author claims a violation of her husband's right to be free from

³ The author refers to *Abdumalik Nazarov v. Uzbekistan*, Communication No. 911/2000, where the Committee found that holding a person for a period as short as five days without being presented before a judge is a violation of Article 9.3.

⁴ The author refers to *Rafael Marques de Morais v Angola* (Communication Number 1128/2002, Para 6.3 (2005), where the Committee found that a ten day incommunicado detention, without access to a lawyer, adversely affected the defendant's right to be brought before a judge.

discrimination on the grounds of political opinion. The government discriminated against Mr. Umarov by arresting him in violation of article 26 of the Covenant.

3.10 Furthermore, the author claims that the State party had violated her husband's right not to be subjected to unlawful attacks on his honor and reputation, in accordance with article 17 of the Covenant. His reputation was unlawfully attacked in an article in the Zerkalo XXI, a state owned news media.

3.11 The State party is alleged to have violated the author's husband's freedom of expression, in particular, his freedom to seek, receive, and impart ideas and information of all kinds (article 19, paragraph 2 of the Covenant). She claims that her husband was targeted for arrest after exercising his freedom of expression due to his leadership position in the Sunshine Coalition and submits various articles and statements in support of her view.

State party's observations on admissibility and merits

4.1 On 14 April 2006, the State party challenged the admissibility of the communication pursuant to article 5, paragraph 2, of the Optional Protocol, maintaining that the available domestic remedies were not exhausted. The State party submits that, according to the Criminal Procedural Code, a resolution of the Appellate instance can be appealed by the convict or his defence lawyer to the Supreme Court under a supervisory review procedure ('надзор'). Since neither Mr. Umarov, nor his defence lawyer submitted such an appeal to the Supreme Court, the State party is of the opinion that available domestic remedies were not exhausted.

4.2 On the facts of the case, the State party notes that on 6 March 2006, the author's husband was sentenced by the Tashkent City Court (Ташкентский городской суд) to 14 years and 6 months of imprisonment for embezzlement of property in particularly large amounts by the organized criminal group he headed; official forgery and bribing; premeditated evasion of taxes and laundering of income obtained through criminal activity. Mr. Umarov's lawyers submitted an appeal while the prosecutor submitted a protest on appeal. On 10-13 April 2006, the Appellate instance of the Tashkent City Court sentenced him to 10 years and 6 months imprisonment with the prohibition to engage in business activities for 5 years. On the basis of the Resolution of the Senate of Oliy Majlis (Upper Chamber of the Parliament) "On amnesty dedicated to the 13th anniversary of the Constitution" this sentence was further decreased by 1/4. The State party lists the names of four lawyers that represented the author's husband during the court hearings of the first instance and on appeal. The court hearing on appeal was conducted according to the procedure applicable to the hearing in first instance, with the participation of both parties. The hearing was public, with the participation of the representatives of the diplomatic missions in Uzbekistan and human rights defenders.

4.3 The State party submits that the arguments of the author and the defence lawyers on use of physical and psychological pressure, detention under improper conditions were addressed during the first instance hearings and on appeal and were considered unfounded. The State party lists the names of four staff members of the Isolator of Temporary Confinement of the Tashkent City Department of Internal Affairs (ИВС ГУВД) that who were heard in the court as additional witnesses and stated that neither unlawful methods of investigation nor pressure were applied to the author's husband and that he himself had not submitted any complaints or petitions in relation to any illegal actions. The Isolator's doctor stated that he conducts daily check-up and discussions with the detainees. When he conducted a check-up of the author's husband, he did not notice any injuries and Mr. Umarov did not complain that anybody had ill-treated him or applied moral or psychological pressure.

Author's comments on admissibility and merits

5.1 On 14 April 2006, the author, on behalf of her husband, submitted to the Committee a request for interim measures, stating that his health had severely deteriorated during the seven months of his detention prior to and during the criminal trial. She alleged that, according to witnesses who saw her husband during the trial, he appeared psychologically stressed, experienced strong heart palpitations and overall physical weakness and could not adequately assess his surroundings. His lawyer had expressed concern regarding the possible forced administration of psychotropic agents to Mr. Umarov.

5.2 On 18 April 2006, the Committee's Special Rapporteur for New Communications and Interim Measures, pursuant to Rule 92 of the Committee's rules of procedure, requested the State party to adopt all necessary measures to protect Mr. Umarov's life, safety and personal integrity, in particular by providing him with the necessary and appropriate medical care and by abstaining from administering any drugs detrimental to his mental or physical health, so as to avoid irreparable harm to him, while the case was under consideration of the Committee. The Special Rapporteur also requested that the State party allowed Mr. Umarov's lawyer to have access to him and to inform the Committee on the measures taken to comply with the above decision within 30 days.

5.3 On 19 April 2006, Mr. Umarov's lawyer again requested in writing to be allowed to visit him and to receive information about his state of health, since neither he, nor his family had been allowed a visit since 28 March 2006. The author provided copies of numerous complaints and petitions to the State party's authorities on this matter. On 24 April 2006, Human Rights Watch submitted a letter with observations on Mr. Umarov's appeal hearings, which took place on 12 and 13 April, corroborating the claim that he looked unwell and disoriented in the court room.

5.4 The author submits that according to the State party's Criminal Procedural Code, the supervisory review procedure is one of an extraordinary nature, since it is only available at the discretion of a limited number of high-level judicial officers. Even if such review were granted, it takes place without a hearing and is only allowed on questions of law. Therefore, the author maintains that domestic remedies were exhausted.

5.5 On 28 August 2006, the author made an additional submission, informing the Committee that, for a first time since his arrest, her husband was permitted a visit by a direct relative at the end of June 2006. During the visit he complained that he had been in a critical medical condition during April and May 2006 and that his requests for medical treatment had been denied. Mr. Umarov also stated that immediately after he was transferred to a penal colony to serve his sentence (date not specified), he was placed in solitary confinement and that he was provided with medical care only after he announced a hunger strike. The author also alleged that by 26 August 2006, her husband had been denied visits by his lawyers for five months. The two latest attempts to visit Mr. Umarov by his attorney, on 14 and 24 August 2006, were rejected by the prison authorities alleging that he was in solitary confinement. The State party did not submit any comments on the additional submission by the author, nor on the merits of her previous submission.

5.6 On 20 September 2006, the author informed the Committee that she received a letter, dated 8 September 2006, informing her that on 30 May 2006 the Supreme Court had rejected a petition for review of her husband's conviction, (submitted on 8 May 2006).

Additional observations by the State party

6. On 23 April 2008, the State party, in response to the Committee's request for interim measures of 18 April 2006 and subsequent reminders of 2 June 2006, and 1 December 2006, submitted information on the state of health of Mr. Umarov. According to the information, since his placement in the penal colony, where he is serving his sentence, Mr.

Umarov has been under regular medical observation. On 25 May 2006, he was tested for syphilis and HIV and both tests were negative. General blood and urine tests, conducted on 16 September 2007, did not demonstrate any irregularities; neither did his blood tests conducted on 6 January 2008. The State party submits that Mr. Umarov's general health condition was "satisfactory"; that he had been diagnosed with coronary disease, stenocardia and hypertension; that he had repeatedly been treated for his illnesses; and that at the time of the submission his blood pressure was 140/95. The State party also submits that Mr. Umarov will be allowed to meet with his lawyers if he personally files a written request to the administration of the colony, in accordance with article 10 of the Criminal Correctional Code of Uzbekistan and that the rights of convicts, including Mr. Umarov's, are ensured in accordance with the existing legislation.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

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 takes note of the State party's submission that the author's husband did not attempt to have his sentence overturned through a supervisory review procedure. The Committee, however, recalls its jurisprudence that a supervisory review is a discretionary review process, which does not constitute an effective remedy for the purposes of exhaustion of domestic remedies.⁵ The Committee also notes that a supervisory review of Mr. Umarov's sentence could not have provided a remedy for the alleged violations of his rights.

7.4 The Committee takes note of the author's claim that the State party has violated her husband's right under article 17 of the Covenant not to be subjected to unlawful attacks on his honor and reputation, by the publication of an article in a state owned news media that slandered his honor, dignity and business reputation. The Committee, however, concludes that the author has failed to sufficiently substantiate this claim for purposes of admissibility, and declares it inadmissible under article 2 of the Optional Protocol.

7.5 The Committee notes the author's claims that she and her husband's lawyers had unsuccessfully attempted to complain, before several authorities, about his deteriorating health, possible mistreatment and administration of psychotropic drugs, the conditions of his initial detention, and the denial of access to his lawyers. These claims were not refuted by the State party. The Committee considers that these claims raise issues under articles 7, 9, paragraphs 1, 3 and 4, 10, paragraph 1, 19, paragraph 2 and article 26 of the Covenant, not finding any obstacles to their admissibility, it declares them admissible and proceeds to a consideration of its merits.

⁵ See, for example, Communication No 836/1998, *Gelazauskas v Lithuania*, Views adopted 17 March 2003.

Consideration of the merits

8.1 The Human Rights Committee has considered the present 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.

8.2 The Committee notes that, whilst the State party has provided comments regarding the communications' admissibility, it has provided almost no information about the merits of the specific claims made by the author. The State party merely contends in general terms that Mr. Umarov was tried and convicted in compliance with Uzbek laws, that the charges and evidence were thoroughly assessed, that his guilt was proved, and that his rights were respected in accordance with the domestic legislation.

8.3 The author has claimed that the State party violated article 7 of the Covenant, as her husband was held naked and without provision of elementary personal hygiene items for several days. He displayed effects of having been administered psychotropic drugs. Upon witnessing the author's husband's condition in the holding cell, during his first visit, his lawyer immediately requested medical attention. However compliance with this request was unnecessarily delayed for many days by the State party's authorities. In this connection, the Committee notes the State party's submission that four officers working in the Isolator of Temporary Confinement testified during the trial that no ill-treatment took place and that the doctor of Isolator testified that when examining the author's husband he did not notice any bodily injuries, nor did the latter complain to him regarding any ill-treatment. The Committee, however, notes that the author has presented numerous statements indicating that her husband's condition deteriorated rapidly after his arrest; that he displayed effects of having been administered psychotropic drugs throughout the investigation and the trial; and that her and her husband's lawyers' requests that prompt medical examinations be carried out had been repeatedly ignored. The Committee notes that the State party has provided no documentary evidence of any specific inquiry into the numerous allegations of ill-treatment. The Committee considers that in the circumstances, the State party has failed to demonstrate in any satisfactory manner how its authorities adequately addressed the allegations of torture and ill-treatment made by the authors in any meaningful way, both in the context of the domestic criminal proceedings and in the context of the present communication. It recalls that the burden of proof in regard to torture or ill-treatment cannot rest alone on the author of a communication, especially in view of the fact that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information. Moreover it is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its authorities. In these circumstances, the Committee considers that due weight must be given to the authors' allegations of torture and ill-treatment. Accordingly, the Committee concludes that the facts as presented by the author reveal a violation of Mr. Umarov's rights under article 7 of the Covenant.

8.4 The author has also claimed a violation of article 9, paragraph 1, of the Covenant, regarding the arbitrary detention of her husband, since he was kept in a temporary holding cell for fifteen days in violation of the domestic Criminal Rules of Procedure, which require transfer from a temporary holding cell within a period of 72 hours. The State party has not refuted this allegation. Accordingly, the Committee concludes that the facts as presented reveal a violation of the author's husband's rights under article 9, paragraph 1, of the Covenant.

8.5 The author has claimed a violation of article 9, paragraph 3, of the Covenant, since her husband was held without a real opportunity to speak with his lawyer for eleven days while in pre-trial detention, which adversely affected his ability to prepare his legal defence. In its submission to the Committee, the State party has not refuted these

allegations. The Committee must accordingly conclude that the facts as presented by the author reveal a violation of the author's husband's rights under article 9, paragraph 3, of the Covenant.

8.6 The author has further claimed a violation of article 9, paragraph 4, of the Covenant, as the State party denied her husband the right to challenge the lawfulness of his detention and prevented him from having contact with his lawyer between 23 October and 2 November 2005. In its submission to the Committee, the State party has not refuted these allegations. The Committee has previously observed that the State party's criminal procedure law provides that decisions regarding arrest/pre-trial detention have to be approved by a prosecutor, are subject to appeal only before a higher prosecutor and cannot be challenged in court. In the Committee's view this procedure does not satisfy the requirements of article 9 of the Covenant.⁶ In the present case the author's husband was arrested on 22 October 2005, and there was no subsequent judicial review of the lawfulness of his detention until he was convicted on 6 March 2006. The Committee therefore concludes that there has been a violation of article 9, paragraph 4, of the Covenant.

8.7 The author has claimed a violation of article 10, paragraph 1, of the Covenant, as her husband was held in a holding cell without clean clothing, no personal hygiene items and no bed for several days and his lawyer's requests for immediate medical attention were delayed without justification by the State party's authorities. Further, the author has claimed that her husband was not allowed to be visited by his family for months after his arrest and that throughout the serving of his sentence he was systematically denied visits from family members. The Committee notes that the State party has provided information about the author's husband's health in September 2007 and January 2008, almost two years after his initial detention. The information only indicated that his condition was "satisfactory" and that his health was being regularly monitored. In the absence of a more detailed explanation from the State party, the Committee concludes that the author's husband was treated inhumanely and without respect for his inherent dignity, in violation of article 10, paragraph 1, of the Covenant.⁷

8.8 The Committee notes the State party's submission that the author's husband was convicted under the domestic legislation on economic crimes. The Committee, however, observes that Mr. Umarov was one of the leaders of the Sunshine Coalition, a political opposition group that had emerged in Uzbekistan, that he was arrested during a police search of the offices of the Coalition, and that the State party has failed to explain the purpose of the above search. The Committee also observes that, according to the information submitted by the author, other leaders of the Coalition were arrested on similar charges around the same time and that a number of companies belonging to members of the Coalition were subjected to investigation by different branches of the State party's authorities immediately following the establishment of the Sunshine Coalition. The Committee, as notified by the author, takes note in particular of the 3 November 2005 Statement of the Permanent Council of the European Union and of the 8 November 2005 Declaration by the Presidency on behalf of the European Union on the human rights situation in Uzbekistan, both of which describe Mr. Umarov as an opposition leader, express concern regarding his treatment by the authorities and request independent assessment of his condition. The Committee further notes, that the State party has not addressed the allegation that Mr. Umarov was arrested and imprisoned in order to prevent him, as a member of a political formation, from expressing his political views. The

⁶ See Communication 959/2000, *Saimijon and Malokhat Bazarov v. Uzbekistan*, Views of 8 August 2006, para 8.2.

⁷ See for instance Communications No. 590/1994, *Bennet v. Jamaica*, paragraphs 10.7 and 10.8; No. 695/1993, *Simpson v. Jamaica*, paragraph 7.2; and No. 704/1996, *Shaw v. Jamaica*, paragraph 7.1.

Committee considers that the arrest, trial and conviction of Mr. Umarov resulted in effectively preventing him from expressing his political views. Accordingly the Committee finds that the State party violated Mr. Umarov's rights under article 19, paragraph 2, and article 26 of the Covenant.

9. 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 reveal violations of article 7, article 9, paragraphs 1, 3 and 4, article 10, paragraph 1, article 19, paragraph 2 and article 26 of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Umarov with an effective remedy. The State party is under an obligation to take appropriate steps to (a) institute criminal proceedings, in view of the facts of the case, for the immediate prosecution and punishment of the persons responsible for the ill-treatment to which Mr. Umarov was subjected, and (b) provide Mr. Umarov with appropriate reparation, including adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

11. 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.]
