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HUMAN RIGHTS COMMITTEE  
Ninety-third session  
7– 25 July 2008

**VIEWS**

**Communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006**

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| <u>Submitted by:</u>              | Mr. Zhakhongir Maksudov and Mr. Adil Rakhimov (represented by counsel, Mrs. Khurnisa Makhaddinova); Mr. Yakub Tashbaev and Mr. Rasuldzhon Pirmatov (represented by counsel, Mr. Nurlan Abdyldaev) |
| <u>Alleged victims:</u>           | The authors   |
| <u>State party:</u>               | Kyrgyzstan  |
| <u>Date of communications:</u>    | 2 March 2006 (Maksudov/Rakhimov), 7 June 2006 (Tashbaev) and 13 June 2006 (Pirmatov) (initial submissions)  |
| <u>Document references:</u>       | Special Rapporteur's rule 92/97 decisions, transmitted to the State party on 6 March 2006 (Maksudov/Rakhimov), 8 June 2006 (Tashbaev) and 13 June 2006 (Pirmatov), not issued in document form    |
| <u>Date of adoption of Views:</u> | 16 July 2008  |

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\* Made public by the decision of the Human Rights Committee.

*Subject matter:* Extradition of four recognised refugees from Kyrgyzstan to Uzbekistan despite request for interim measures of protection.

*Substantive issues:* Death penalty; torture, cruel, inhuman or degrading treatment or punishment; *non-refoulement*; arbitrary detention; right to be brought promptly before a judge; right to adequate time and facilities for the preparation of the defence.

*Procedural issues:* Non-substantiation of claims; incompatibility *ratione materiae*.

*Articles of the Covenant:* 6; 7, read together with 2, paragraph 3; 9, paragraphs 1 and 3; 14, paragraph 3 (b)

*Articles of the Optional Protocol:* 2 and 3

On 16 July 2008 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 communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006.

[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

Ninety-third session

concerning

**Communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006\***

|                                |   |
|--------------------------------|---|
| <u>Submitted by:</u>           | Mr. Zhakhongir Maksudov and Mr. Adil Rakhimov (represented by counsel, Mrs. Khurnisa Makhaddinova); Mr. Yakub Tashbaev and Mr. Rasuldzhon Pirmatov (represented by counsel, Mr. Nurlan Abdyldaev) |
| <u>Alleged victims:</u>        | The authors   |
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| <u>Date of communications:</u> | 2 March 2006 (Maksudov/Rakhimov), 7 June 2006 (Tashbaev) and 13 June 2006 (Pirmatov) (initial submissions)  |

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

Meeting on 16 July 2008,

Having concluded its consideration of communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006, submitted to the Human Rights Committee by Zhakhongir Maksudov, Adil Rakhimov, Yakub Tashbaev and Rasuldzhon Pirmatov 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 authors of the communications, and the State party,

Adopts the following:

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

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

1.1 The authors of the communications are Zhakhongir Maksudov, Adil Rakhimov, Yakub Tashbaev and Rasuldzhon Pirmatov, all Uzbek nationals born in 1975, 1974, 1956 and 1959, respectively. At the time of submission of their cases, all authors were granted refugee status by the Office of the United Nations High Commissioner for Refugees (UNHCR) and were detained in a detention centre (SIZO) of Osh, Kyrgyzstan, awaiting removal to Uzbekistan on the basis of an extradition request from the Uzbek General Prosecutor's Office. They claim violations by Kyrgyzstan of their rights under article 6; article 7, read together with article 2, paragraph 3; article 9, paragraphs 1 and 3; and article 14, paragraph 3 (b), of the International Covenant on Civil and Political Rights.<sup>1</sup> They are represented by counsel, Khurnisa Makhaddinova (Maksudov/Rakhimov) and Nurlan Abdylidaev (Tashdaev/Pirmatov).

1.2 On 6 March 2006 (for Maksudov/Rakhimov), 8 June 2006 (for Tashbaev) and 13 June 2006 (for Pirmatov), in accordance with Rule 92 of its Rules of Procedure, the Human Rights Committee, acting through its Special Rapporteur for New Communications, requested the State party not to forcibly remove the authors while their communications are under consideration by the Committee. No reply was received from the State party on the request for interim measures of protection. On 11 August 2006, counsel informed the Committee that all authors had been handed over to the Uzbek law enforcement authorities on 9 August 2006 on the basis of the decision issued by the Kyrgyz General Prosecutor's Office.

1.3 Pursuant to Rule 94 of its rules of procedure, the Committee decided to join consideration of the four communications as they are all based on the same facts, and advance the same claims.

### **The facts as presented by the authors**

#### ***Case of Zhakhongir Maksudov***

2.1 At around 5-6 a.m. on 13 May 2005, on his way to work in Andijan, Uzbekistan, Maksudov learnt that a demonstration was taking place in the city's main square. He approached the square at around 7-8 a.m. and observed other people expressing their grievances related to poverty, government repression and widespread corruption. He did not address the gathering. After some time, the demonstrators were fired on; soldiers were indiscriminately shooting into the crowd. In panic and fearing persecution by Uzbek authorities, Maksudov crossed the border into Kyrgyzstan on 14 May 2005.

2.2 Maksudov, together with 524 other individuals who fled Andijan on 13 May 2005, was installed in a tent camp set up along the Uzbek-Kyrgyz border in the Suzak region near Jalalabad (Kyrgyzstan) by UNHCR and administered by the Department of Migration Services under the Kyrgyz Ministry of Foreign Affairs (DMS).<sup>2</sup>

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<sup>1</sup> The Optional Protocol entered into force for the State party on 7 January 1995.

<sup>2</sup> On 22 September 2005, the Department of Migration Services under the Kyrgyz Ministry of Foreign Affairs was transformed by the Resolution of the Zhogorku Kenesh (Parliament) into the State Committee on Migration and Employment of the Kyrgyz Republic.

2.3 On 28 May 2005, the Uzbek General Prosecutor's Office issued an authorisation for Maksudov's placement in custody, and his transportation to the detention facility of the Uzbek Ministry of Internal Affairs in the Andijan region. On 28 May 2005, he was charged in *absentia* with terrorism (article 155, part 3, of the Uzbek Criminal Code), violent attempt to overthrow the Uzbek constitutional order (article 159, part 3), sabotage (article 161), organization of criminal community (article 242, part 2), mass disturbances (article 244), illegal acquisition of firearms, ammunition, explosives and explosive devices (article 247, part 3) and premeditated murder (article 97, part 2).

2.4 Under the terms of the decision of 28 May 2005, Maksudov was accused of participating in a criminal conspiracy which resulted in an attack on the police station of the Andijan Regional Department of Internal Affairs during the night of 12-13 May 2005. Having killed several law enforcement officers and acquired a large quantity of firearms and ammunitions, "terrorists" broke through the gates of Andijan prison, freed and armed prison inmates. They then moved to make armed assaults on the premises of the Andijan Regional Department of the National Security and of the Andijan Regional Administration. In the course of these acts, Maksudov allegedly took hostage the Andijan City Prosecutor and other high-ranking officials of the Andijan regional administration, subjected them to torture and then killed them. The fact of hostage-taking was corroborated by photographs obtained during the preliminary investigation.

2.5 In early June 2005, the Uzbek authorities requested Kyrgyzstan to extradite 33 individuals, including Maksudov; all were charged with having committed crimes under various articles of the Uzbek Criminal Code (see paragraph 2.3). The extradition request was based on the 1993 Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993 Minsk Convention) and the 1996 Agreement between Kyrgyzstan and Uzbekistan on the provision of mutual legal assistance in civil, family and criminal matters (1996 Agreement).

2.6 On 9 June 2005, Mr. Maksudov applied for asylum in Kyrgyzstan. On the same day, he was issued a certificate confirming that his application had been registered by the DMS.

2.7 On 16 June 2005, Maksudov, together with 16 other individuals, was taken into custody by Kyrgyz law enforcement officers and placed into the temporary confinement ward (IVS) of the Jalalabad Regional Department of Internal Affairs (Kyrgyzstan) on the basis of the decision of the Uzbek General Prosecutor's Office of 28 May 2005, where the individuals concerned were designated as "terrorists". Maksudov's arrest warrant was issued by the Andijan Regional Prosecutor (Uzbekistan) on 29 May 2005. In violation of the Kyrgyz Criminal Procedure Code (Kyrgyz CPC),<sup>3</sup> the legality of his placement into custody was not examined either by a supervising prosecutor or a court.

2.8 On 16 June 2005, two Kyrgyz lawyers, Makhaddinova and Abdyldaev tried to meet with Maksudov in the IVS premises to brief him on the possibility of legal representation. They were refused access to him, allegedly on the grounds that they had not obtained the authorisation for

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<sup>3</sup> The author refers to Article 104 of the Kyrgyz CPC (correctly: article 110 of the read together with article 435 of the same Code).

such a meeting from the Jalalabad Regional Prosecutor.<sup>4</sup> Finally, Abdyldaev managed to secure Maksudov's request to be represented by him and his colleague but he was prevented from having a discussion with Maksudov by the IVS administration. On an unspecified date, Maksudov was transferred to the SIZO of Osh (Kyrgyzstan). There, both counsel again unsuccessfully attempted to see him. On 22 June 2005, both counsel managed to receive authorisation of the Interregional Specialized Prosecutor's Office for Osh, Jalalabad and Batken regions to meet Maksudov, and on 24 June 2005, Makhaddinova finally met with her client.

2.9 Both counsel tried to access the case file relating to Maksudov's removal at the Jalalabad Regional Prosecutor's Office, but were refused permission to do so. The Deputy Jalalabad Regional Prosecutor explained that the Kyrgyz CPC did not provide for any possibility for an individual under threat of extradition or his representative, to examine the extradition file.

2.10 The DMS examined Maksudov's asylum application from 9 June to 26 July 2005. On 19 July 2005, it established that Maksudov's asylum request was well founded, as he could be persecuted in Uzbekistan, as a participant in and eyewitness of the Andijan events. The DMS recognised that his case fell within the definition of "refugee", within the meaning of article 1 A-2 of the 1951 Convention on the Status of Refugees and article 1 of the Kyrgyz Refugee Law. The DMS then examined information received from the Jalalabad Regional Department of Internal Affairs and the Jalalabad Regional Prosecutor's Office (Kyrgyzstan) about individuals accused of having committed serious crimes on Uzbek territory, including Maksudov. Despite being presented with a photograph where he was shown with three other individuals accompanying the Andijan City Prosecutor on his way to and from the besieged building of the Andijan Regional Administration, Maksudov claimed that he did not know the Andijan City Prosecutor and was unaware of the circumstances of his participation in the demonstration. He added that he did not notice that armed individuals in civilian clothes were present during the demonstration, although this fact was corroborated by numerous witness accounts collected by the international non-governmental organizations (NGOs).<sup>5</sup> These circumstances were interpreted by DMS as an attempt by Maksudov to hide some facts about the demonstration and his participation in it. It concluded, therefore, that Maksudov fell under the exclusion clause of article 1 F-b of the Refugee Convention and his asylum application should be rejected. On 26 July 2005, the DMS issued a decision rejecting Maksudov's asylum application on the basis of article 1 F-b of the 1951 Refugee Convention.

2.11 On 3 August 2005, the DMS decision was appealed to the Interregional City Court of Bishkek by Maksudov's counsel. They submitted that:

- a) There were significant discrepancies between the questionnaire filled in by DMS officials on 28 June 2005 during an asylum interview with Maksudov and notes taken by UNHCR staff present at that same interview. These discrepancies had a negative impact on the DMS decision of 26 July 2005.

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<sup>4</sup> Reference is made to article 17 of the Law "On the Procedure and Conditions of Keeping in Custody of Individuals Detained on the Suspicion and Accused of Having Committed Crimes".

<sup>5</sup> Reference is made to the Human Rights Watch Publication "Bullets Were Falling Like Rain", the Andijan Massacre, May 13, 2005.

b) Neither DMS nor the Prosecutor's Office provided evidence that Maksudov had personally participated in the attack on the police station or the siege of the Andijan Regional Administration building.

c) Maksudov's statement that he did not notice armed individuals in civilian clothes during the demonstration was based on what he had seen himself. Although accounts collected by NGOs from other witnesses among the demonstrators suggested the presence of armed individuals, Maksudov's statement only indicated that there were no armed individuals in his proximity and did not refer to the demonstration as a whole. Moreover, UNHCR staff present during the interview of 28 June 2005 endorsed his description of the facts.

d) The photograph presented by the DMS and the Prosecutor's Office did not prove that Maksudov directly participated in the killing of the individual shown on it. The materials from the preliminary investigation received from Uzbekistan did not contain any evidence of, nor detailed information on, Maksudov's direct participation in the activities of which he was accused of.

2.12 On 11 August 2005, counsel requested the competent judge to allow Maksudov to be present during the court hearing. This request was rejected. As a result, Maksudov was unable to take part in any court hearings relating to his case. On 18 August 2005, the Interregional City Court of Bishkek annulled the DMS decision of 26 July 2005 and upheld Maksudov's appeal. On 14 October 2005, the DMS appealed the decision of the Interregional City Court of Bishkek on cassation to the Judicial Chamber for Economic and Administrative Cases of the Bishkek City Court (Bishkek City Court).

2.13 On 28 October 2005, Maksudov was granted refugee status by UNHCR. According to a UNHCR note verbale of 28 October 2005 addressed to the Permanent Mission of Kyrgyzstan to the United Nations Office at Geneva, the decision had been made after a thorough review of all circumstances surrounding Maksudov's case, including the assessment of the extradition materials and other elements related to the consideration of the exclusion clauses which UNHCR found not to be applicable. In the same note, UNHCR informed the Kyrgyz authorities that it was prepared to provide a durable solution for Maksudov's case through resettlement to a third country, should he be released from detention.

2.14 On 31 October 2005, Maksudov's counsel filed objections to the cassation appeal lodged by the DMS with the Bishkek City Court.

2.15 On 13 December 2005, the Bishkek City Court quashed the decision of the Interregional City Court of Bishkek of 18 August 2005 and upheld the DMS cassation appeal. On 28 December 2005, Maksudov's counsel filed a request for supervisory review of the ruling of the Bishkek City Court with the Supreme Court. In this appeal, counsel referred, *inter alia*, to UNHCR's decision of 28 October 2005 granting Maksudov refugee status. On 16 February 2006, the Supreme Court upheld the ruling of the Bishkek City Court of 13 December 2005. Under article 359, paragraph 1, of the Kyrgyz Civil Procedure Code, the 'resolution of a review instance court becomes executory after its adoption, it is final and cannot be appealed'.

***Case of Adil Rakhimov***

3.1 On 13 May 2005, Rakhimov learnt from his neighbours that a demonstration was taking place in the city's main square. He approached the square at around 8-9 a.m. He wanted to address the meeting but was unable to do so. The remaining facts of Rakhimov's case are identical to those described in paragraphs 2.1 – 2.9 above.

3.2 The DMS examined Rakhimov's asylum application from 10 June to 26 July 2005. On 19 July 2005, it established that Rakhimov's asylum request was well founded, as he could be persecuted in Uzbekistan, as a participant in and eyewitness of the Andijan events. The DMS recognised that his case fell within the definition of "refugee", within the meaning of article 1 A-2 of the 1951 Refugee Convention and article 1 of the Kyrgyz Refugee Law. The DMS then examined information received from the Jalalabad Regional Department of Internal Affairs and the Jalalabad Regional Prosecutor's Office (Kyrgyzstan) about individuals accused of having committed serious crimes on Uzbek territory, including Rakhimov. In the DMS questionnaire of 28 June 2005, Rakhimov stated that he did not know the Andijan City Prosecutor and that he did not see him, in particular, on 13 May 2005. On 18 June 2005 Rakhimov stated in the interrogation protocol that he saw the Andijan City Prosecutor speaking to demonstrators on 13 May 2005, and that he subsequently helped to protect the prosecutor from these demonstrators. The DMS had a photograph on which Rakhimov was shown with other individuals accompanying the Andijan City Prosecutor. He further stated that he did not notice that armed individuals in civilian clothes were present during the demonstration, although this fact was corroborated by numerous witness accounts collected by the NGOs. These circumstances were interpreted by DMS as an attempt by Rakhimov to hide some facts about the demonstration and his participation in it. It thus concluded that Rakhimov fell under the exclusion clause of article 1 F-b of the Refugee Convention and his asylum application should be rejected. On 26 July 2005, the DMS issued a decision rejecting Rakhimov's asylum application on the basis of article 1 F-b of the Refugee Convention.

3.3 On 10 August 2005, the DMS decision was appealed to the Interregional City Court of Bishkek. Rakhimov's counsel submitted the same arguments as in Maksudov's case (see paragraph 2.11 above).

3.4 On an unspecified date, Rakhimov's counsel requested the competent judge to allow Rakhimov to be present during the court hearing; this was rejected. As a result, Rakhimov did not take part in any court hearings relating to his case. On 8 September 2005, the Interregional City Court of Bishkek annulled the DMS decision of 26 July 2005 and upheld Rakhimov's appeal. On 6 October 2005, DMS appealed the decision of the Interregional City Court of Bishkek to the Bishkek City Court.

3.5 On 28 October 2005, Rakhimov was granted refugee status by UNHCR. The content of UNHCR's note verbale was the same as in Maksudov's case (see paragraph 2.13 above).

3.6 On 31 October 2005, Rakhimov's counsel filed objections to the cassation appeal lodged by the DMS with the Bishkek City Court.

3.7 On 13 December 2005, the Bishkek City Court quashed the decision of the Interregional City Court of Bishkek of 8 September 2005 and upheld the DMS appeal. On 28 December 2005,



counsel filed a request for supervisory review of the ruling of the Bishkek City Court with the Supreme Court. Counsel invoked, *inter alia*, the UNHRC decision of 28 October 2005 granting Rakhimov refugee status. On 16 February 2006, the Supreme Court upheld the ruling of the Bishkek City Court of 13 December 2005.

### ***Case of Yakub Tashbaev***

4.1 During the night of 12-13 May 2005, Tashbaev, together with other inmates, was freed from Andijan prison by unknown individuals. At that time, he was serving a sentence of 14 years' imprisonment after being convicted, on 3 May 2005, of possession of drugs (article 273, part 5, of the Uzbek Criminal Code) and fraud (article 168, part 1). After his escape from prison, Tashbaev participated in the demonstration that took place in Andijan's main square. He did not address the meeting. The remaining facts of Tashbaev's case are identical to those described in paragraphs 2.1 – 2.2 and 2.6 above.

4.2 On 23 May 2005, the Uzbek General Prosecutor's Office issued an authorisation for Tashbaev's placement in custody, and his transportation to the detention facility of the Uzbek Ministry of Internal Affairs in the Andijan region. On 21 May 2005, he was charged in *absentia* with terrorism (article 155, part 3, of the Uzbek Criminal Code) and escape from prison (article 222, part 2).

4.3 Under the terms of the decision of 23 May 2005, Tashbaev was accused of participating in a criminal conspiracy with the members of the illegal *Akramiya* extremist group, which resulted in his escape from Andijan prison and participation in armed assaults on the premises of a number of administrative buildings in Andijan, resulting in the death of several individuals.

4.4 Further to the Uzbek authorities' extradition request to Kyrgyzstan (see paragraph 2.5 above), Tashbaev was taken into custody on 9 June 2005. The remaining facts of Tashbaev's case are identical to those described in paragraphs 2.6 – 2.7. On 22 June 2005, counsel managed to receive authorisation of the Interregional Specialized Prosecutor's Office for Osh, Jalalabad and Batken regions to meet Tashbaev, the meeting took place on the same day.

4.5 The DMS examined Tashbaev's asylum application from 10 June to 26 July 2005. On 19 July 2005, it established that his asylum request was well founded, as he could be persecuted in Uzbekistan, as a participant in and eyewitness of the Andijan events and as an escapee from Andijan prison. The DMS recognised that his case fell within the definition of "refugee". The DMS then examined information received from the Jalalabad Regional Department of Internal Affairs and the Jalalabad Regional Prosecutor's Office (Kyrgyzstan), according to which Tashbaev was sentenced to 14 years' imprisonment for possession of drugs and fraud and was recognised as particularly dangerous recidivist. On 21 May 2005, he was presented with additional charges of terrorism and escape from prison. During the interview of 21 June 2005, Tashbaev acknowledged that in the past he had been serving yet another prison term from 1996 to 2003 after being found guilty of possession of drugs. He stated, however, that at the time of his escape from Andijan prison during the night of 12-13 May 2005, he was still awaiting trial on the charges of illegal possession of drugs and fraud. Tashbaev further stated that he did not notice that armed individuals in civilian clothes were present during the demonstration, although this fact was corroborated by numerous witness accounts collected by the NGOs. These circumstances were interpreted by DMS as an attempt by Tashbaev to hide some facts about the

demonstration and his participation in it. It concluded, therefore, that he fell under the exclusion clause of article 1 F-b of the Refugee Convention and his asylum application should be rejected. On 26 July 2005, the DMS issued a decision rejecting Tashbaev's asylum application on the basis of article 1 F-b of the Refugee Convention.

4.6 On 3 August 2005, the DMS decision was appealed to the Interregional City Court of Bishkek. Tashbaev's counsel submitted that:

a) The asylum interview with Tashbaev on 21 June 2005 was conducted by the DMS in the absence of an interpreter and there was no document on file confirming that Tashbaev refused the interpreter's services. The DSM questionnaire was incomplete; many questions and answers were simply not reflected. The incompleteness of the questionnaire negatively impacted on the DMS's decision of 26 July 2005.

b) Neither DMS nor the Prosecutor's Office provided evidence that Tashbaev personally participated in the attack on the police station or the siege of the Andijan Regional Administration building. Moreover, the DMS officials did not sufficiently clarify whether there were any armed individuals present at the time when Tashbaev was freed from Andijan prison.

c) Tashbaev's statement that he did not notice any armed individuals in civilian clothes during the demonstration was based on what he had seen himself. Although accounts collected by NGOs from other witnesses among the demonstrators suggested the presence of armed individuals, Tabashev's statement only indicated that there were no armed individuals in his proximity and did not refer to the demonstration as a whole

d) Materials received from the Jalalabad Regional Prosecutor's Office did not contain any evidence of, nor detailed information on, Tashbaev's direct participation in the terrorist acts.

4.7 On 15 August 2005, counsel requested the competent judge to allow Tashbaev to be present during the court hearing; this was rejected. As a result, Tashbaev was unable to take part in any court hearings relating to his case.

4.8 On 28 October 2005, Tashbaev was granted refugee status by UNHCR. The content of UNHCR's note verbale was the same as in Maksudov's case (see paragraph 2.13 above).

4.9 On 26 December 2005, the Interregional City Court of Bishkek upheld the DMS decision of 26 July 2005 and rejected Tashbaev's appeal. On 18 January 2006, Tashbaev's counsel appealed the decision of the Interregional City Court of Bishkek to the Bishkek City Court. Counsel invoked, *inter alia*, the UNHCR decision of 28 October 2005 granting Tashbaev refugee status.

4.10 On 2 March 2006, the Bishkek City Court upheld the decision of the Interregional City Court of Bishkek of 26 December 2005 and rejected Tashbaev's appeal. On 4 April 2006, counsel filed a request for supervisory review of the ruling of the Bishkek City Court with the Supreme Court. On 25 May 2006, the Supreme Court upheld the ruling of the Bishkek City Court of 26 December 2005.

### ***Case of Rasuldzhon Pirmatov***

5.1 At around 8 a.m. on 13 May 2005, Pirmatov travelled to Andijan from a neighbouring village for business purposes and was on his way to Andijan market when he learnt that a demonstration was taking place in the city's main square. He participated in the demonstration, wanted to address the meeting but his turn did not come. The remaining facts of Rakhimov's case are identical to those described in paragraphs 2.1 – 2.3 and 2.6 above.

5.2 Under the terms of the decision of 28 May 2005, Pirmatov was accused of participating in a criminal conspiracy which resulted in an attack at the police station of the Department of Internal Affairs of the Andijan region during the night of 12-13 May 2005. Having killed several law enforcement officers and acquired a large quantity of firearms and ammunitions, "terrorists" broke through the gates of Andijan prison, freed and armed prison inmates. They then moved to make armed assaults on the premises of the Andijan Regional Department of the National Security and of the Andijan Regional Administration.

5.3 Further to the Uzbek authorities' extradition request to Kyrgyzstan (see paragraph 2.5 above), Pirmatov was taken into custody on 16 June 2005. The remaining facts of Pirmatov's case are identical to those described in paragraphs 2.7 – 2.9.

5.4 The DMS examined Pirmatov's asylum application from 9 June to 26 July 2005. On 19 July 2005, it established that his asylum request was well founded, as he could be persecuted in Uzbekistan, as a participant in and eyewitness of the Andijan events. The DMS recognised that his case fell within the definition of "refugee". The DMS then examined information received from the Jalalabad Regional Department of Internal Affairs and the Jalalabad Regional Prosecutor's Office (Kyrgyzstan) about individuals accused of having committed serious on Uzbek territory, including Pirmatov. In addition, in the interrogation protocol, Pirmatov stated that during the night of 12-13 May 2005 he was at home, whereas during a subsequent asylum interview on 1 July 2005 he said that he had spent that night in his shop. According to the DMS, he provided conflicting statements which gave grounds to suspect that Pirmatov was hiding other information about the events that took place on the night of 12-13 May 2005 and, in particular, his participation in them. Moreover, Pirmatov claimed that he knew the Andijan City Prosecutor, since he was his fellow countryman, and therefore on 13 May 2005 he tried to protect the prosecutor from the demonstrators. Pirmatov claimed that he pulled the prosecutor out of the crowd and pushed him behind the fence of the Andijan Regional Administration. The DMS had a photograph where Pirmatov was shown with three other individuals accompanying the Andijan City Prosecutor on his way to and from the besieged Administration building. During the interview of 28 June 2005, Pirmatov stated that he saw only 5-6 armed individuals in civilian clothes, who were standing, whereas during the interview of 1 July 2005, he said that they were walking and coming from the right side of the Administration building. He did not know anything about the hostages, although presence of hostages was corroborated by numerous witness accounts collected by NGOs. These circumstances were interpreted by the DMS as an attempt by Pirmatov to hide some facts about the demonstration, as well as his refusal to cooperate with the DMS. It concluded, therefore, that Pirmatov fell under the exclusion clause of article 1 F-b of the Refugee Convention and his asylum application should be rejected. On 26 July 2005, the DMS issued a decision rejecting Pirmatov's asylum application on the basis of article 1 F-b of the Refugee Convention.

5.5 On 2 August 2005, the DMS decision was appealed to the Interregional City Court of Bishkek. Pirmatov's counsel submitted the same arguments as in Maksudov's case (see paragraph 2.11, arguments a), b), d) above). In addition, he claimed that discrepancies in Pirmatov's statement about his whereabouts during the night of 12-13 May 2005 were explained by him during the supplementary interview. He stated, *inter alia*, that he was stressed during the interrogation, gave a wrong answer to this question but did not dare to correct it when the protocol was read aloud to him. Moreover, UNHCR staff present during the interview of 28 June 2005 concluded to the veracity of his description of facts.

5.6 On 16 August 2005, counsel requested the competent judge to allow Pirmatov to be present during the court hearing; this was rejected. As a result, Pirmatov was unable to take part in any court hearings relating to his case. On 14 October 2005, counsel requested the competent judge to postpone examination of Pirmatov's case until the completion of transformation of DMS into the State Committee on Migration and Employment.<sup>6</sup>

5.7 On 28 October 2005, Pirmatov was granted refugee status by UNHCR. The content of UNHCR's note verbale was the same as in Maksudov's case (see paragraph 2.13 above).

5.8 On 29 December 2005, the Interregional City Court of Bishkek upheld the DMS decision of 26 July 2005 and rejected Pirmatov's appeal. This decision was adopted in the absence of both Pirmatov's counsel and despite their request of 29 December 2005 to postpone the hearing to another date, as none of them could participate in the hearing. On 13 January 2006, counsel appealed the decision of the Interregional City Court of Bishkek to the Bishkek City Court. Counsel invoked, *inter alia*, the UNHCR decision of 28 October 2005 granting Pirmatov refugee status.

5.9 On 2 March 2006, the Bishkek City Court upheld the decision of the Interregional City Court of Bishkek of 29 December 2005 and rejected Pirmatov's appeal. On 4 April 2006, Pirmatov's counsel filed a request for supervisory review of the ruling of the Bishkek City Court in to the Supreme Court. On 13 June 2006, the Supreme Court upheld the ruling of the Bishkek City Court of 29 December 2005.

6. In their initial communication, the authors claimed that the Uzbek General Prosecutor's Office provided the Kyrgyz authorities with documents showing that they were charged in *absentia*, respectively, with terrorism (Tashbaev) and premeditated murder and terrorism (Maksudov/Rakhimov/Pirmatov), for which Uzbek law imposes the death penalty. None of these documents, however, contain any evidence that the authors directly participated in the crimes with which they were charged. Furthermore, the authors challenge veracity of these documents, as Uzbekistan submitted a total of 253 extradition requests with regard to the male population of the Suzak refugee camp on the basis of almost identical charges.

### **The original complaint**

7.1 When the authors' cases were examined by the Kyrgyz courts, the Kyrgyz president had extended a moratorium on the imposition of death penalty until its final abolition, whereas the death penalty at that time still existed in Uzbekistan. According to the authors, the DMS, and

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<sup>6</sup> Supra n.2.

subsequently all Kyrgyz courts, concluded that the authors' life and freedom were at risk, should they be returned to Uzbekistan. The authors claim that by extraditing them under these circumstances to Uzbekistan without verifying the veracity of the documents submitted by Uzbek authorities and in circumstances where there is a real risk to their lives, Kyrgyzstan would violate its obligations under article 6 of the Covenant. They refer to the Committee's jurisprudence in *Charles Chitat Ng v. Canada*<sup>7</sup>.

7.2 The authors recall that the prohibition of torture is absolute. The exclusion clauses of the 1951 Refugee Convention are irrelevant for cases in which there is a danger of exposing an individual to torture upon return. They refer to numerous NGO and the United Nations reports confirming that torture is prevalent in Uzbekistan. According to the OHCHR Report on the Mission to Kyrgyzstan concerning the events in Andijan, Uzbekistan, 13-14 May 2005, '[t]here is an urgent need for a stay of removal to Uzbekistan of the Uzbek asylum seekers and eyewitnesses of the Andijan events who would face the risk of torture if returned.'<sup>8</sup>

7.3 The authors claim that there is a high risk that they will be subjected to torture and tried in violation of fair trial guarantees, if they are extradited to Uzbekistan. Even if the Kyrgyz authorities received diplomatic assurances from Uzbek authorities that the authors would not be subjected to torture upon extradition, such assurances would not be sufficient. Taking into account that the Kyrgyz authorities had to airlift 450 asylum seekers from Uzbekistan for resettlement in third countries because they could not guarantee their security on Kyrgyz territory, serious doubts exist as to the capacity of Kyrgyz authorities to guarantee the authors' security on Uzbek territory. Furthermore, the State party is under an obligation to carry out an independent investigation if there is a suspicion that subsequent to his/her extradition an individual was subjected to torture.

7.4 The authors claim that articles 6 and 7, read together with article 2, paragraph 3, are violated, because the principle of *non-refoulement* is not included in the exhaustive list of grounds for refusing the extradition request provided by the Kyrgyz Criminal Procedure Code, the 1993 Minsk Convention and 1996 Agreement. *Non-refoulement* is guaranteed by article 11 of the Kyrgyz Refugee Law but this article is not applied in practice. Furthermore, under article 435 of the Kyrgyz CPC, decisions on extradition of foreign nationals are taken by the Kyrgyz General Prosecutor on the basis of the extradition request. The extradition decision is subject to immediate execution and there are no effective legal remedies to challenge it. The Kyrgyz Civil Procedure Code allows an appeal against actions of public officials who violate Kyrgyz law, but this procedure can only be used after the violation in question has taken place.

7.5 The authors were taken into custody in Kyrgyzstan on the basis of the arrest warrants issued by the Uzbek prosecutor and a letter from the Jalalabad Regional Prosecutor (Kyrgyzstan). Under article 435 of the Kyrgyz CPC, upon receipt of another state's extradition request, an individual is taken into custody under the procedure established by article 110 of the CPC. This article stipulates that placement in custody may be decided by an investigator or prosecutor, with

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<sup>7</sup> Communication No. 469/1991, *Charles Chitat Ng v. Canada*, Views adopted on 5 November 1993, para.14.1.

<sup>8</sup> OHCHR Report on the Mission to Kyrgyzstan concerning the events in Andijan, Uzbekistan, 13-14 May 2005 (E/CN.4/2006/119), para.55.

the approval of a supervising prosecutor and in the presence of a defence lawyer, for crimes punishable by a minimum of 3 years' imprisonment. In the authors' cases, this procedure was not observed, as their placement in custody was not authorised by the Kyrgyz prosecutor and it was done in the absence of their counsel. Under article 435, part 3, of the Kyrgyz CPC, an individual whose extradition was requested should be released if the extradition is not carried out within 30 days after he/she was taken into custody. The authors further claim that article 110 of the Kyrgyz CPC violates article 9, paragraph 3, of the Covenant in that it does not require that anyone detained on a criminal charge is brought promptly before a judge. The authors respectively submit that their rights under article 9, paragraphs 1 and 3, were violated, as all of them were kept in custody for more than a year without being brought before a judge.

7.6 Finally, the authors submit that their right under article 14, paragraph 3(b), was violated as they were not allowed to communicate with counsel of their choosing between the date of their placement in custody and, respectively, 22 (Tashbaev) and 24 (Maksudov/Rakhimov/Pirmatov) June 2005.

#### **Further issues arising following the Committee's request for interim measures**

8.1 On 11 August 2006, the Committee was informed by counsel that all four authors had been handed over to Uzbek law enforcement authorities on 9 August 2006. By letter of 14 August 2006 to the Permanent Mission of Kyrgyzstan to the United Nations Office at Geneva, the Committee, without wishing to prejudice the accuracy of counsel's allegations, reminded the State party's authorities that it considered failure by a State party to comply with the Committee's formal request for interim measures of protection as a serious breach of the State party's obligations under the Optional Protocol. The Committee requested the State party's authorities to inform it without delay about the authors' status and, should the State party's investigation find the counsel's allegation to be correct, to provide the Committee with explanations as soon as possible.

8.2 On 23 August 2006, the State party, in response to the Committee's request for explanations, noted that, by decisions of 16 February 2006 (Maksudov/Rakhimov), 25 May (Tashbaev) and 13 June (Pirmatov) 2006, the Kyrgyz Supreme Court endorsed the findings of the Bishkek City Court, which upheld the DMS decision to deny refugee status to the authors.

8.3 The State party submits that according to evidence presented by Uzbek authorities, Tashbaev had been sentenced to 16 years' imprisonment in 1996. In 2005 he was convicted for drug trafficking and sentenced to 14 years' imprisonment. He was also recognized as being a recidivist. During the Andijan events, he escaped from detention and joined those seeking asylum in Kyrgyzstan. Pirmatov, Rakhimov and Maksudov were accused of taking the Andijan City Prosecutor hostage during the riots in Andijan. He was subsequently assassinated.

8.4 Under Kyrgyz law and the State party's obligations under bilateral and multilateral agreements on legal assistance and under United Nations conventions, the Kyrgyz General Prosecutor's Office decided, on 8 August 2005, to accept the request of the Uzbek General Prosecutor's Office to return the Uzbek citizens in question to Uzbekistan. They would be charged by Uzbek authorities for offences that they had committed prior to their arrival in Kyrgyzstan.

8.5 The State party argues that this decision was taken on the basis of a comprehensive and objective study of all the evidence submitted by Uzbek authorities, which prove that the authors had committed serious criminal offences in Uzbekistan. Under Kyrgyz criminal law, they would be accused of committing acts recognized as serious crimes, incurring deprivation of liberty and, therefore, their extradition to the requesting State is fully justified. The decision by the Kyrgyz General Prosecutor's Office complies with the Refugee Convention, as the provisions of the Convention do not apply to any person with respect to whom there are serious reasons for considering that he has committed a serious non-political crime outside the country of refuge prior to his admission to that country.

8.6 The State party explains that the commitments entered into by Kyrgyzstan in the framework of the Commonwealth of Independent States, the Shanghai Cooperation Organization and bilateral agreements also underpinned its decision to return the authors to Uzbekistan. In particular, the official request from Uzbek authorities was processed in accordance with Kyrgyzstan's obligations under the 1993 Minsk Convention, the 1996 Agreement, the 1994 agreement on legal assistance and cooperation between the Kyrgyz General Prosecutor's Office and the Uzbek General Prosecutor's Office, and the Shanghai Convention on Combating Terrorism, Separatism and Extremism, adopted on 15 June 2001.

8.7 The Kyrgyz General Prosecutor's Office received assurances from the Uzbek General Prosecutor's Office that a full and objective investigation would be carried out into the authors' cases, and that none of them would be persecuted for political reasons or subjected to torture. Uzbekistan is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, under which it is obliged to take effective legislative, administrative, judicial or other measures to prevent acts of torture.

8.8 Regarding the allegations of violations of human rights during the extradition process, in particular the right to asylum, the State party recalls that this right may not be invoked in the case of prosecutions arising from non-political crimes. Article 33, paragraph 2, of the Refugee Convention states that the benefit of that provision may not be claimed by a refugee if there are reasonable grounds to regard him as a danger to the national security of the country in which he is, or who, having been convicted of a particularly serious crime, constitutes a danger to the community of that country. The State party submits that characterisation of a threat to national security is its sovereign right and fully within its domestic jurisdiction, as per article 2, paragraph 7, of the United Nations Charter.

8.9 As explained by the representatives of the Kyrgyz General Prosecutor's Office during a press conference of 11 August 2006, neither Kyrgyz legislation nor international conventions oblige the State party to give prior notice to UNHCR and to authors' counsel of the imminent extraditions. Moreover, UNHCR's decision to grant refugee status to them was made without waiting for the judgment of the Kyrgyz Supreme Court on the appeals brought by the authors against Kyrgyz authorities' denial to grant them refugee status.

#### **State party non-response on admissibility and merits**

9. By Notes Verbales of 6 March 2006 (Maksudov/Rakhimov), 8 June 2006 (Tashbaev) and 13 June 2006 (Pirmatov), 5 September 2006 (Maksudov/Rakhimov/Tashbaev/Pirmatov), 1 February 2007 (Maksudov), 5 February 2007 (Rakhimov/Tashbaev/Pirmatov) and 10 August

2007 (Maksudov/Rakhimov/Tashbaev/Pirmatov), the State party was requested to submit to the Committee information on the admissibility and merits of the communications. The Committee notes that this information has not been received. While acknowledging the State party's response of 23 August 2006 (paragraphs 8.2 – 8.9) in relation to the Committee's request for interim measures, the Committee regrets the State party's failure to provide the further information requested with regard to the admissibility or the merits of the authors' claims. It recalls that under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have taken. In the absence of a reply from the State party, due weight must be given to the authors' allegations, to the extent that these have been properly substantiated.<sup>9</sup>

## **Issues and proceedings before the Committee**

### **Non-respect of the Committee's request for interim measures**

10.1 The Committee notes that the State party extradited the authors although their communications had been registered under the Optional Protocol and a request for interim measures of protection had been addressed to the State party in this respect. The Committee recalls<sup>10</sup> that by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and article 1). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual (article 5, paragraphs 1 and 4). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.

10.2 Apart from any violation of the Covenant found against a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In the present communications, the authors alleged that their rights under article 6 and article 7 of the Covenant would be violated, should they be extradited to Uzbekistan. Having been notified of the communications, the State party breached its obligations under the Protocol by extraditing the authors before the Committee could conclude its consideration and examination and the formulation and communication of its Views. It is particularly regrettable for the State to having done so after the Committee has acted under rule 92 of its Rules of Procedure, requesting the State party to refrain from doing so.

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<sup>9</sup> See, e.g., Communication No. 1208/2003, *Kurbonov v. Tajikistan*, Views adopted on 16 March 2006, paragraph 4.

<sup>10</sup> See, Communication No. 869/1999, *Piandiong at al. v. the Philippines*, Views adopted on 19 October 2000.



10.3 The Committee recalls<sup>11</sup> that interim measures pursuant to rule 92 of the Committee's rules of procedure adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Protocol. Flouting of the Rule, especially by irreversible measures such as, as in the present case, the authors' extradition undermines the protection of Covenant rights through the Optional Protocol.

### **Consideration of admissibility**

11.1 Before considering any claim contained in the communications, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communications are admissible under the Optional Protocol to the Covenant.

11.2 The Committee notes that the same matter is not being examined under any other international procedure, in line with the requirements of article 5, paragraph 2(a), of the Optional Protocol. In the absence of any State party's objection, the Committee considers that the requirements of article 5, paragraph 2(b), of the Optional Protocol have been met.

11.3 The Committee has noted that the authors invoke their right under article 14, paragraph 3(b). The Committee does not consider it necessary to decide the question of admissibility of the communications on the basis of article 14, paragraph 3(b), *as such*, as the principles underlying that provision are taken into account when considering the other claims of the authors.

11.4 The Committee considers that the remaining part of the authors' allegations, raising issues under article 6 and article 7, read alone and together with article 2, paragraph 3; article 9, have been sufficiently substantiated, for purposes of admissibility, and declares them admissible.

### **Consideration of the merits**

12.1 The Human Rights Committee has considered the communications 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.

12.2 On the question of whether the authors' placement in custody was carried out in conformity with the requirements of article 9, paragraphs 1, of the Covenant, the Committee notes that deprivation of liberty is permissible only when it takes place on such grounds and in accordance with such procedure as are established by domestic law and when this is not arbitrary. In other words, the first issue before the Committee is whether the authors' deprivation of liberty was in accordance with the State party's relevant laws. The authors claimed that contrary to article 110 of the Kyrgyz CPC their placement in custody was not authorised by the Kyrgyz prosecutor and was done in the absence of their counsel and therefore violated relevant domestic provisions. In the absence of a reply from the State party, due weight must be given to the authors' allegations, to the extent that they are substantiated, and it must be assumed that the events occurred as described by the authors. Consequently, the Committee finds a violation of article 9, paragraphs 1, of the Covenant.

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<sup>11</sup> See, Communication No 964/2001, *Saidova v. Tajikistan*, Views adopted on 8 July 2004.

12.3 Under the above circumstances and in the light of the finding of a violation of article 9, paragraph 1, the Committee does not deem it necessary to separately examine the authors' claims under article 9, paragraph 3.

12.4 As to whether the authors' extradition from Kyrgyzstan to Uzbekistan exposed them to a real risk of torture or other ill-treatment in the receiving State, in breach of the prohibition of *refoulement* contained in article 7 of the Covenant, the Committee observes that the existence of such a real risk must be decided in the light of the information that was known, or ought to have been known, to the State party's authorities at the time of the extradition, and does not require proof of actual torture having subsequently occurred although information as to subsequent events is relevant to the assessment of initial risk. In determining the risk of such treatment in the present cases, the Committee must consider all relevant elements. The existence of assurances, their content and the existence and implementation of enforcement mechanisms are all elements which are relevant to the overall determination of whether, in fact, a real risk of proscribed ill-treatment existed. In this regard, the Committee reiterates that States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.<sup>12</sup> This principle should not be subject to any balancing with considerations of national security or the type of criminal conduct an individual is accused or suspected of.

12.5 The Committee considers at the outset that it was known, or should have been known, to the State party's authorities at the time of the authors' extradition that there were widely noted and credible public reports that Uzbekistan resorted to consistent and widespread use of torture against detainees<sup>13</sup> and that the risk of such treatment was usually high in the case of detainees held for political and security reasons. In the Committee's view, these elements in their combination show that the authors faced a real risk of torture in Uzbekistan if extradited. Moreover, the offences for which the authors were sought by Uzbekistan were punishable by death in that country. Given the risk of a conviction and death sentence being procured by treatment incompatible with article 7, there was also a similar risk of a violation of article 6, paragraph 2, of the Covenant. The procurement of assurances from the Uzbek General Prosecutor's Office, which, moreover, contained no concrete mechanism for their enforcement, was insufficient to protect against such risk. The Committee reiterates that at the very minimum, the assurances procured should contain such a monitoring mechanism and be safeguarded by arrangements made outside the text of the assurances themselves which would provide for their effective implementation.<sup>14</sup>

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<sup>12</sup> Human Rights Committee, General Comment No. 20: Prohibition of torture and cruel treatment or punishment (article 7), 10 March 1992 (HRI/GEN/1/Rev.8), para.9.

<sup>13</sup> Report of the Special Rapporteur on the question of torture, Theo van Boven, on the mission to Uzbekistan (E/CN.4/2003/68/Add.2); and the OHCHR Report on the Mission to Kyrgyzstan concerning the events in Andijan, Uzbekistan, supra n.8.

<sup>14</sup> See, Communication No. 1416/2005, *Alzery v. Sweden*, Views adopted on 25 October 2006, para.11.5.

12.6 The Committee recalls<sup>15</sup> that if a State party removes a person within its jurisdiction to another jurisdiction and there are substantial grounds for believing that there is a real risk of irreparable harm in the other jurisdiction, such as that contemplated by articles 6 and 7 of the Covenant, the State party itself may be in violation of the Covenant. Since the State party has not shown that the assurances procured from Uzbekistan were sufficient to eliminate the risk of torture and of imposition of the death penalty consistent with the requirements of article 6, paragraph 2, and article 7, the Committee concludes that the authors' extradition thus amounted to a violation of article 6, paragraph 2, and article 7 of the Covenant.

12.7 As to the claim that no effective remedies were available to challenge the Kyrgyz General Prosecutor's extradition decision of 8 August 2006, the Committee notes that given the presence of a real risk of torture and of imposition of the death penalty, article 2 of the Covenant, read together with article 6, paragraph 2, and article 7, requires that an effective remedy be available for violations of the latter provisions. In this regard, the Committee notes that all of the authors' proceedings in the State party's courts were related to asylum, and not to extradition proceedings. It further notes that Kyrgyz laws do not allow for judicial review of the General Prosecutor's extradition decisions before the extradition takes place and that in the case of the authors these decisions were implemented the following day. The Committee recalls that by the nature of *refoulement*, effective review of an extradition decision must have an opportunity to take place prior to extradition, in order to avoid irreparable harm to the individual and rendering the review otiose and devoid of meaning.<sup>16</sup> The absence of any opportunity for effective, independent review of the decision to extradite in the authors' cases accordingly amounted to a breach of article 6, paragraph 2, and article 7, read together with article 2, of the Covenant.

13. 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 disclose a violation by Kyrgyzstan of the authors' rights under article 9, paragraph 1; article 6, paragraph 2, and article 7, read alone and together with article 2, of the Covenant. The Committee reiterates its conclusion that the State party also breached its obligations under article 1 of the Optional Protocol.

14. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including adequate compensation. The State is requested to put in place effective measures for the monitoring of the situation of the authors of the communication. The State party is urged to provide the Committee with updated information, on a regular basis, of the authors' current situation. The State party is also under an obligation to prevent similar violations in the future.

15. 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

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<sup>15</sup> Communication No.469/1991, *Ng v. Canada*, Views adopted on 5 November 1993, para. 6.2; Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004 (HRI/GEN/1/Rev.8), para. 12.

<sup>16</sup> See, *Alzery v. Sweden*, supra n.14, para.11.8.

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.]

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