



**International covenant
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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

UZBEKISTAN*

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Action taken by the Government of Uzbekistan in 2004 to implement the recommendations of the Special Rapporteur on the question of torture of the United Nations Commission on Human Rights

The invitation extended to the Special Rapporteur on the question of torture to visit Uzbekistan and the subsequent adoption by the Cabinet of Ministers of a plan of action to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment show the Government's political will to prohibit and eradicate such practices.

The Government is strictly observing this policy. On 24 February 2004, the Cabinet of Ministers issued Order No. 112-f on the establishment of an interdepartmental working group to monitor the observance of human rights by law enforcement agencies. The group held its first meeting on 23 March 2004.

On 9 March 2004, the Cabinet of Ministers approved a plan of action to implement the Convention against Torture, the text of which was distributed during the general debate of the high-level segment at the sixtieth session of the Commission on Human Rights.

The measures outlined in the plan are being fully implemented within the established time frame. Law enforcement agencies are taking decisive steps to prevent human rights violations, including torture, by their staff. A culture of intolerance towards and automatic accountability for such violations is being established in all units.

On 12 June 2004, the interdepartmental working group to monitor the observance of human rights by law enforcement agencies held its second meeting. Representatives of all law enforcement agencies, the Ministry of Finance, the Ministry of Health, the Ombudsman, the National Centre for Human Rights, the Institute for Monitoring Current Legislation reporting to the Oliy Majlis, the Institute for Strategic and Interregional Research reporting to the President of Uzbekistan, the Academy of the Ministry of Internal Affairs, the Tashkent State Institute of Law and the "Ishtimoi fikr" centre for public opinion participated.

The interdepartmental working group focused in particular on the efforts by the Ministry of Internal Affairs' Central Penal Correction Department to protect human rights. It was noted that through the implementation of Government policy aimed at liberalizing penal enforcement legislation and the penal correction system, there have been significant decreases in the number of custodial sentences and an improvement in prisoners' conditions of detention. Representatives of international organizations, the European Union, the diplomatic corps and foreign media have been able to see this for themselves during unimpeded visits to penal institutions. It is worthwhile noting that, with a view to improving the system for monitoring the observance of prisoners' rights, the Central Penal Correction Department has now drafted an Instruction governing the organization of visits to penal institutions by representatives of the diplomatic corps, international non-governmental organizations (NGOs), local non-profit NGOs and the mass media.

Pursuant to the plan of action to implement the Convention against Torture, the working group discussed the results of the meetings of the Coordinating Council of Law Enforcement Authorities attached to the Office of the Procurator General and of the collegium of the Office of the Procurator General held on 29 May and 20 May 2004 respectively. Those meetings devised effective measures and took decisions aimed at ensuring strict compliance by law enforcement officers with international obligations relating to human rights and freedoms.

The working group noted that the independence of the courts was one of the principal requirements for effective machinery to protect human rights and freedoms, and that the extent to which the courts' needs for facilities and equipment were met was of great importance in that regard. Consequently, when the matter was discussed, note was taken both of the continuing difficulties and of the progress that had been made. For example, all courts of general jurisdiction have now been fully supplied with office equipment (computers) and vehicles. Moreover, new court buildings are being opened and court buildings are under construction or being renovated in the Republic of Karakalpakstan, in Tashkent and in Fergana, Samarkand, Syr Darya and other oblasts.

A conference entitled "Mutual cooperation between the judicial and extrajudicial systems in protecting human rights - international experience" took place on 10 September 2004. It was organized by the Human Rights Commissioner (Ombudsman) of the Oliy Majlis, in conjunction with the Supreme Court and the National Centre for Human Rights and with the support of the Organization for Security and Cooperation in Europe (OSCE) Centre in Tashkent.

The conference, which was part of the Government's multifaceted general policy for protecting constitutional rights and freedoms, marked a new phase in the implementation of judicial reform and the ongoing democratization of Government activities to safeguard human rights in Uzbekistan. Only a few years ago it would have been difficult to imagine active cooperation between a parliamentary extrajudicial body for the protection of human rights and the institutions of "the third branch of power". While worldwide practice shows that conflicts arise in relations between the courts and ombudspersons, there are also cases of normal "peaceful" relations (in Europe, particularly in Poland), which promote the emergence and introduction of various ways and means of resolving problems relating to the protection of civil rights, the development of democratic institutions and the improvement of legislation in order to uphold the human rights guaranteed by the Constitution.

The improvement of legislation regulating the activities of the Ombudsman (in August 2004 a new version of the Act on the Human Rights Commissioner of the Oliy Majlis was adopted) will raise and strengthen the Commissioner's legal status in the foreseeable future and widen the range of mechanisms used to protect the freedoms guaranteed in Uzbekistan, which is of real interest to the Government's foreign partners.

In 1998, an Outline of cooperation between the Ombudsman and law enforcement agencies and judicial bodies was drawn up. In the light of the intensification of judicial reform and on the basis of recommendations by the Special Rapporteur on the question of torture, Mr. Theo van Boven, a number of amendments have been made to the Outline this year.

At the closure of the conference participants drafted recommendations aimed at improving cooperation between the Ombudsman and law enforcement agencies, including the following:

- All courts in the Republic of Uzbekistan should further the activities of the Ombudsman by creating an atmosphere of trust and cooperation, and should harmonize their understandings regarding the performance of their common tasks concerning the protection and observance of people's constitutional rights and freedoms;
- The Ombudsman should seek new ways and means of upholding the freedoms guaranteed in Uzbekistan by making active use of the existing agreements on mutual cooperation concluded with the Constitutional Court, the Office of the Procurator General, the Council of the Federation of Trade Unions and the Centre for the Study of Human Rights and Humanitarian Law;
- Conferences, seminars, round tables and other events on interaction between judicial and extrajudicial bodies in the protection of human rights should be widely and regularly held in the country's regions, with the participation of various groups and sectors of society;
- Joint efforts should be undertaken to inform the public of the reforms and transformations under way in the legislative and judicial spheres;
- Active use should be made of the possibilities offered by and experience of international organizations in the area of interaction between judicial and extrajudicial bodies, including in the OSCE States.

On 24 September 2004, the Plenum of the Supreme Court adopted Decision No. 12 on certain aspects of the application of provisions of the law of criminal procedure relating to the admissibility of evidence.

The Decision states that the underlying principle of the law of criminal procedure, as laid down in the Constitution, is the presumption of innocence, whereby a person is considered innocent until he or she is proved guilty in accordance with the law and the court's verdict has entered into force. Verdicts may only be based on evidence collected in accordance with a procedure prescribed by law.

It further states that, with a view to affording citizens greater protection against unlawful acts by State bodies and public officials responsible for criminal proceedings and to ensuring that such bodies and officials observe and fulfil the requirements of the Constitution and the Code of Criminal Procedure, the Plenum of the Supreme Court of the Republic of Uzbekistan decides as follows:

1. To make it clear that, pursuant to the principle of legality enshrined in article 11 of the Code of Criminal Procedure, the proceedings in all criminal cases must be conducted in strict compliance with the procedure laid down in the law of criminal procedure.

Compliance with the principle of legality in the activities of organs of initial inquiry or pre-trial investigation and of the courts concerning the collection, verification and evaluation of evidence is obligatory.

Whatever the grounds for it, any departure by a person conducting an initial inquiry or pre-trial investigation, a procurator or a court from the full implementation and observance of the provisions of the Code of Criminal Procedure regulating the general conditions for the submission of evidence will result in the evidence thus obtained being declared inadmissible.

Inadmissible evidence has no legal force and may not be used for proving the circumstances under articles 82 to 84 of the Code of Criminal Procedure or as grounds for bringing charges.

2. To draw the attention of the organs of initial inquiry and pre-trial investigation and the courts to the fact that the correct resolution of the question of the admissibility of evidence plays an important role in establishing the facts of a case.

The conditions for the admissibility of evidence are as follows:

The evidence must be obtained by the appropriate person, in other words, a person legally empowered to perform the procedural act whereby the evidence is obtained;

Factual information must be obtained only from the sources listed in article 81, paragraph 2, of the Code of Criminal Procedure;

The evidence must be obtained in compliance with the regulations and procedure governing the performance of the procedural act whereby the evidence is obtained;

When obtaining evidence, all the requirements of the law governing the procedure for and outcome of investigative and judicial action must be observed.

To make it clear to the courts that failure to fulfil any of the aforementioned conditions for the admissibility of evidence will constitute grounds for declaring the evidence inadmissible.

3. Evidence shall be declared inadmissible, inter alia, if:

(1) It is obtained:

When the person responsible for conducting the initial inquiry performs investigative action without having been instructed to do so by the investigator or, following completion of the initial inquiry, the procurator;

The investigative action is carried out by an investigator who has not taken on the case in accordance with the established procedure or who has not been included in the team of investigators;

The investigative action is carried out by a person who is subject to a challenge on the grounds set forth in article 76 of the Code of Criminal Procedure;

(2) The information is obtained without the performance of investigative or judicial actions or from a source that is not provided for by law, for instance during inquiries that were not authorized in the manner prescribed by the law of criminal procedure;

(3) The evidence is obtained by unlawful means, i.e. without observing the legal rules governing its collection:

(a) The investigative action is, in cases where the procurator's approval is essential carried out without such approval (emergencies excepted);

(b) A person having an interest in the outcome of the case, such as law enforcement officers or other persons assisting them on a voluntary basis, has participated in the investigative action as an independent witness;

(c) Testimony, including confessions, is obtained through torture, violence or other cruel, inhuman or degrading forms of treatment, or through deceit or other means;

(d) An expert's conclusions are obtained through violation of a suspect's, accused's or defendant's rights regarding the ordering of an expert examination or when the expert is the subject of a challenge;

(e) Testimony is obtained from a suspect, accused or defendant without the presence of defence counsel when such presence is obligatory;

(f) A suspect's, accused's or defendant's close relatives are, contrary to article 116 of the Code of Criminal Procedure, questioned without their consent as witnesses or aggrieved parties concerning circumstances relating to the suspect, accused or defendant;

(4) There is a breach of the procedure for recording evidence:

No information is given concerning the persons who took part in the investigative or judicial action;

The persons taking part in the investigative or judicial action are not informed of their rights and duties;

The times at which the investigative or judicial action began and ended are not shown;

Other requirements of articles 90 to 93 of the Code of Criminal Procedure (Recording of evidence) are not fulfilled.

Evidence may also be declared inadmissible in other instances in which it is obtained in breach of the requirements of the law of criminal procedure.

4. The investigative authorities and the courts must bear in mind that some evidence which is declared inadmissible because it was not lawfully collected may be used after the appropriate procedures have been duly carried out (for example, the omission of certain information or entries from the records of investigative or judicial action may be remedied by questioning the independent witnesses or other participants in the action, and where necessary the investigator and so on).

However, there is some evidence which, because of its legal nature, may not be supplemented once declared invalid (for instance, repeat questioning of an aggrieved party or a witness without his or her consent in instances where by law such consent is required, repeat presentation of a person or object for identification, and so on) and which therefore may not be invoked to corroborate a particular point relating to a case.

5. The investigative authorities and the courts must bear in mind that inadmissible evidence may not be used as the grounds for any decision, including the bill of indictment or the verdict, relating to a case.

When evidence may not be supplemented, the court must, without referring the case for further investigation, take a final decision on the merits based on all the available evidence collected in compliance with the requirements of the law of criminal procedure.

6. Evidence obtained in breach of the law may be declared inadmissible by the person conducting the initial inquiry, the investigator, the procurator or the court.

The question of the inadmissibility of evidence may be raised by suspects, accused persons or their legal counsel or representatives or else by aggrieved parties, civil claimants or civil respondents.

7. When declaring evidence inadmissible, the court shall indicate in the descriptive part of the verdict that it has been excluded and give the reasons for its decision.

8. To make it clear to the courts that, whatever their level, they are entitled, when considering a criminal case on its merits, to re-examine the question of declaring as admissible evidence that has been excluded if the parties so request.

9. When considering criminal cases the courts are obliged to assess carefully whether during the initial inquiry, the preliminary investigation and the court hearing the requirements of the law of criminal procedure governing the general conditions of proof have been fulfilled and to respond to breaches of the law by issuing special decisions, and where necessary, to rule on the bringing of proceedings in the light of the articles of the Criminal Code laying down penalties for official misconduct or obstruction of justice.

On the basis of the above-mentioned Supreme Court Decision and the plan of action to implement the Convention against Torture, a specialist conference was held in Tashkent on 25 November 2004 on the topic of "The inadmissibility of evidence obtained by unlawful means".

The conference considered matters relating to the admissibility of evidence, the significance of the Decision of the Plenum of the Supreme Soviet, the evaluation of evidence, measures to eliminate the use of torture and unlawful methods of conducting investigations and the objectives of the judicial process as regards the collection and evaluation of evidence.

The judges of the Supreme Court of the Republic of Uzbekistan, staff from the Office of the Procurator General and the Ministry of Internal Affairs, members of the Bar Association and international organizations and research workers from Tashkent State Legal Institute participated in the conference.

During lively discussion at the conference, practising lawyers and scholars expressed a variety of opinions on the theory of evidence and suggestions were made for improving the law of criminal procedure.

The third meeting of the interdepartmental working group to monitor the observance of human rights by law enforcement agencies was held on 18 November. The following issues were discussed:

- The implementation of measures to monitor the activities of staff of law enforcement agencies with a view to preventing torture and other forms of ill-treatment;
- The drafting of instructions for procuratorial staff concerning the application of article 243 of the Code of Criminal Procedure (Procedure for the application of the preventive measure of remand in custody) making it obligatory for the procurator in person to question the suspect or accused regarding the use against him or her of unlawful methods;
- A programme utilizing international experience and the technical assistance of donor countries in order to improve and step up the training of law enforcement officers in behaviour towards persons detained, persons suspected, accused, or convicted of committing crimes;
- A study of the practical implementation of articles 985 to 991 of the Civil Code, which lay down the procedure for compensating for moral and material damage caused to persons who have been subjected to torture or similar forms of ill-treatment;
- The drafting of a policy outline for the further development and improvement of the Ministry of Internal Affairs' penal correction system;
- The study of State authorities' responses to the temporary measures recommended by the United Nations Human Rights Committee, etc.

Aside from members of the interdepartmental group, representatives of scholarly circles dealing with human rights also participated in the meeting. The meeting outlined a series of measures for the further implementation of the tasks entrusted to the interdepartmental working group.

The Ministry of Internal Affairs pays special attention to implementation of the provisions of the United Nations treaties and the rules and principles of national legislation aimed at ensuring and protecting human rights and freedoms.

On 25 November 2004, for example, the central administrative board of the Ministry of Internal Affairs considered the tasks facing the internal affairs agencies in implementing the provisions of the Decision of the Plenum of the Supreme Court of 24 September 2004 on certain aspects of the application of provisions of the law of criminal procedure relating to the admissibility of evidence, where it is noted that “verdicts may only be based on evidence collected in accordance with a procedure prescribed by law”.

When considering the matter at the meeting, the central administrative board discussed five main aspects of the activity of the internal affairs agencies, based on: theoretical and practical research; the study of the practice of developed nations and of universally recognized international norms; efforts made to resolve the problems of strengthening the rule of law, protecting human rights and combating torture, namely:

First aspect. The reform of the detention of persons suspected of having committed offences and their handing over to the law enforcement agencies.

It should be noted that a person can only be detained on the grounds indicated in the law; detention on the basis of assumption of any kind or solely on the grounds of information collected during initial inquiries is prohibited. This means that as soon as the person is handed over to the law enforcement agencies, a detention record must be drawn up in accordance with article 225 of the Code of Criminal Procedure and the length of detention is calculated from the time the person is handed over to the law enforcement agency. Such an approach makes it essential for evidence of the suspect’s guilt to be sought prior to his or her detention.

Second aspect. The observance of due process for everyone suspected of having committed a crime, i.e. explanation in due time of the person’s rights as a suspect and detainee, provision of defence counsel, notification of the detention to close relatives and so on.

Third aspect. Public involvement in the examination of all complaints relating to serious breaches of the law and the use of torture, i.e. the conduct of what are known as independent investigations. At present all complaints are examined by the competent bodies, and if they are found to be justified, specific measures are taken against the guilty parties.

However, when breaches of the law are not confirmed, it is somewhat difficult to convince the public of the objective and unbiased nature of the investigation. This results in the spread, including at the international level, of various ill-founded rumours concerning the activity of the law enforcement agencies. That in turn damages Uzbekistan’s credibility in the international community.

Fourth aspect. Ensuring the transparency of the activities of the internal affairs agencies. The public should be informed in good time of the work of the internal affairs agencies in combating crime, strengthening the rule of law and ensuring the observance of citizens constitutional rights and freedoms. That will help to increase public confidence in the law enforcement agencies.

Fifth aspect. Improving knowledge of the law and concern for justice among the staff of the internal affairs agencies.

Following consideration and discussion of this matter, the central administrative board of the Ministry of Internal Affairs took a decision and the agencies and units of the Ministry of Internal Affairs have been assigned specific tasks. Particular attention was paid to the following issues: the detention of persons suspected of committing offences and the safeguarding of their procedural rights; determining the status of citizens' complaints and reports of unlawful acts by staff of the internal affairs agencies; the study by all staff of the requirements of the Decision of the Plenum of the Supreme Court; testing and study of staff's knowledge of domestic and international law when appointing them to posts and awarding them special ranks; setting up an Internet site for the Ministry of Internal Affairs, informing the public in a timely manner of any incidents of concern to them, responding to critical reports in the mass media about the activities of the internal affairs agencies; conducting in conjunction with the "Izhtimoi fikr" public opinion centre on opinion polls concerning the activities of the internal affairs agencies and other matters relating to the above aspects of the work of internal affairs agencies.

Furthermore, in 2004, with the assistance of the United Nations Development Programme, the Ministry of Internal Affairs published in Uzbek 5,000 copies of a compendium of international human rights instruments relating to the work of law enforcement agencies. These were distributed to agencies and units of the Ministry of Internal Affairs. On 25 November 2004, a presentation on the compendium was made to the Oliy Majlis in the presence of representatives of the diplomatic corps and international organizations.

The Central Investigative Department of the Ministry of Internal Affairs has, with the assistance of the Association of American Jurists and the Swiss Embassy in Uzbekistan, drafted and published 100,000 copies of a booklet for participants in criminal proceedings, which describes the procedural rights prescribed by domestic and international law. On the instructions of the management of the Ministry of Internal Affairs, the booklets have been sent to all internal affairs agencies for obligatory distribution to everyone brought into internal affairs offices.

On 4 December 2004, a round table was held in Tashkent jointly with the United States Embassy to study international experience of the operation of habeas corpus. Representatives of the law enforcement agencies participated.

On 10 December 2004, a round table entitled "Human rights issues in the work of the law enforcement agencies" was held in Parliament. During it an agreement was concluded between the Ministry of Internal Affairs and the Human Rights Commissioner (Ombudsman) of the Oliy Majlis to step up monitoring of observance of human rights in the work of the internal affairs authorities.

The implementation of the plan of action is being coordinated by the interdepartmental working group to monitor the observance of human rights by law enforcement agencies. The results of the group's work are publicized in the mass media.

The Government of Uzbekistan regularly sends information on the progress of implementation of this Government plan to the Office of the United Nations High Commissioner for Human Rights. In November 2004, the Government sent its replies and comments to the letter and recommendations written by the Special Rapporteur on the question of torture, Mr. Theo van Boven, on the basis of non-governmental sources. It should be noted that non-governmental sources do not always contain objective and full information on the progress of measures by the Government to prohibit and eliminate torture and similar forms of ill-treatment.
