PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Mr. José Guevara (Mexico)
Vice-Chairperson: Ms. Leigh Toomey (Australia)
Vice-Chairperson: Ms. Elina Steinerte (Latvia)
Mr. Sétoundji Roland Jean-Baptiste Adjovi (Benin)
Mr. Seong-Phil Hong (Republic of Korea)

HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of

Azamjon Formonov
Citizen of the Republic of Uzbekistan

v.

Government of the Republic of Uzbekistan


Submitted by:
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September 19, 2017

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1 Resolutions 1991/41, 1994/32, 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the UN Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]… all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights…” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, ¶ 6, (15 March 2006), later extended the mandate through Resolutions 6/4, 15/18, and 24/7.
QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION

I. IDENTITY

1. Family name: Formonov
2. First name: Azamjon
3. Sex: Male
4. Birth date: December 13, 1978
5. Nationality: Uzbekistan
6. (a) Identity document (if any): N/A
   (b) Issued by:
   (c) On (date):
   (d) No.:
8. Address of usual residence: Guliston city, 3rd micro-region, house 16, apartment 2

II. ARREST

1. Date of arrest: Mr. Azamjon (the “Applicant”) was originally arrested on April 29, 2006 on charges not at issue in this petition. The Applicant was notified of the new charges against him, which are the subject of this petition, on April 25, 2015, while in prison serving the sentence resulting from his original arrest and conviction.
2. Place of arrest (as detailed as possible): Jaslyk Prison, Karakalpakstan, Uzbekistan
3. Forces who carried out the arrest or are believed to have carried it out: N/A
4. Did they show a warrant or other decision by a public authority? Yes. The Applicant was already in custody, but received an official notice of new charges against him.
5. Authority who issued the warrant or decision: Unknown
III. DETENTION

1. Date of detention: April 25, 2015

2. Duration of detention (if not known, probable duration): The Applicant has been in detention since April 29, 2006 until the date of this petition. The period of detention corresponding to the charges at issue in this petition began on April 25, 2015 and continues as of the date of this petition.

3. Forces holding the detainee under custody: Government of Uzbekistan

4. Places of detention (indicate any transfer and present place of detention): The Applicant is currently housed at Jaslyk, Prison, where he has been housed since 2006. The Applicant was transferred to Nukus City Prison for a brief period during his trial.

5. Authorities that ordered the detention: Kunigrat Criminal Court of the Kungradsky district of the Republic of Karakalpakstan

6. Reasons for the detention imputed by the authorities: The Applicant was convicted of four minor prison infractions, allegedly occurring between January 24, 2015 and March 20, 2015.

   However, the Applicant’s prosecution was the direct result of his human rights work and his speaking out about the injustices of his original conviction and detention.


IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

I. Statement of Facts

1. Part A of this section describes the Uzbekistan government’s documented history of cracking down on human rights activists and failure to provide due process rights to its detainees. Part B presents the case of the Applicant, an Uzbek human rights defender wrongly detained on April 25, 2015 and sentenced by the government to five further years in prison on May 1, 2015.

   A. Background on Uzbekistan
i. Political Background of Uzbekistan

2. Uzbekistan obtained its independence from the Soviet Union in 1991 by referendum, and for 25 years the nation was controlled by President Islam Karimov, chairman of the People’s Democratic Party and former Communist Party leader. President Karimov was elected to four terms as president despite a constitutional prohibition on serving more than two consecutive terms. The people of Uzbekistan do not have a meaningful opportunity to change the composition of the government through the electoral process. Only those political parties loyal to President Karimov were allowed to register and “compete” in elections, which effectively suppresses all political opposition. As a result, the international non-governmental organization (“NGO”) Freedom House labeled Uzbekistan as “not free” and has given the country the worst possible score in its most recent assessment of the state’s democratic development.

3. President Karimov died in August 2016, and was succeeded by the former Prime Minister, Shavkat Mirziyoyev, who won the presidential election with 88 percent of the vote in December 2016. In its preliminary election report, the Organization for Security and Cooperation’s Office for Democratic Institutions and Human Rights noted that “limits on fundamental freedoms undermine political pluralism and led to a campaign devoid of genuine competition.” In one of his first speeches as president, Mirziyoyev made clear he would not reform the previous administration’s repressive practices, promising to quell any “internal or external threats to stability and sovereignty.”

ii. Repression of Free Speech and Human Rights Defenders in Uzbekistan

4. It is currently estimated that Uzbekistan holds hundreds, possibly thousands, of prisoners on political grounds. Despite constitutional protection of freedom of speech, Uzbekistan severely limits this right. Uzbekistan arbitrarily detains critical journalists, political opponents, human rights defenders, and members of independent religious groups on
spurious charges of extremism, bribery, extortion, and drug-related charges.\textsuperscript{11} The United Nations Human Rights Committee (the “Committee”) has expressed concern about “consistent reports of harassment, surveillance, arbitrary arrest and detention, torture and ill-treatment by law enforcement officers and prosecutions on trumped-up charges of independent journalists, government critics and dissidents, human rights defenders and other activists, in retaliation for their work.”\textsuperscript{12} Similarly, the United Nations Special Rapporteur on Human Rights Defenders has expressed concern about the “continuous harassment, detention, and prosecution of human rights defenders due to their human rights work.”\textsuperscript{13}

5. Uzbek law criminalizes publicly insulting the president with up to five years in prison and prohibits publishing articles that advocate “subverting or overthrowing the constitutional order.”\textsuperscript{14} A 2016 law on Threats to Public Security and Public Order prescribes up to eight years in prison for anyone who uses religion online or in the media to “violate civil concord, disseminate defamatory, destabilizing fabrications, commit other acts aimed against the established rules of behavior in society and public safety, and spread panic among the population.”\textsuperscript{15} It is estimated that at least 12,000 people are currently imprisoned on vague charges related to “extremism” or “anti-constitutional” activity.\textsuperscript{16}

6. The government recognizes only two domestic human rights NGOs: Ezgulik and the Independent Human Rights Organization. Their members are frequently subjected to harassment intimidation, and threats of judicial proceedings.\textsuperscript{17} Other organizations that are unable to register are also hampered by harassment; their members are placed under surveillance, are denied exit visas to prevent them from attending international trainings and conferences, and are subjected to beatings, spurious criminal and administrative charges, arbitrary detention, and house arrest.\textsuperscript{18} For instance, in 2016, Elena Urlaeva, chairperson of the Human Rights Alliance of Uzbekistan, was forcibly detained in a psychiatric hospital under court order. She was beaten several times and forced to take psychotropic drugs.\textsuperscript{19} In another incident in the same year, she was detained and beaten


\textsuperscript{14} US Dep’t State Report on Human Rights, \textit{supra} note 7.

\textsuperscript{15} Id.

\textsuperscript{16} Uzbekistan: Events of 2016, \textit{supra} note 9.

\textsuperscript{17} US Dep’t State Report on Human Rights, \textit{supra} note 7.


\textsuperscript{19} US Dep’t State Report on Human Rights, \textit{supra} note 7.
by National Security Service officers after conducting interviews with forced laborers.\(^{20}\)

7. The state also controls many media outlets and blocks websites that contain content critical of the regime.\(^{21}\) It subjects independent journalists to harsh retribution, including harassment, detention and threats of imprisonment. In one case in 2015, Barhokhon Khudayarova, editor in chief of the \textit{Huquq Duyosi (World of Law)} newspaper, was convicted of extortion and sentenced to five years and four months in prison after writing a critical article on the Narin District Prosecutor’s Office and State Tax Committee.\(^{22}\)

### iii. Lack of Judicial Independence and Due Process Protections in Uzbekistan

8. Although the Constitution of Uzbekistan (the “Constitution”) provides for the separation between the executive, legislative and judicial branches of government, in practice the judiciary is not independent and the prosecutor’s recommendations generally prevail.\(^{23}\) All judges are appointed by the president for renewable five-year terms.\(^{24}\) Uzbekistan’s laws set forth important protections for citizens accused of criminal offenses, but these protections are frequently ignored by the General Prosecutor’s Office. Most trials are officially open to the public, although access is sometimes arbitrarily restricted.\(^{25}\) Defendants are entitled to attend court proceedings, confront witnesses and present evidence, however, judges have declined defense motions to summon additional witnesses or to enter evidence supporting the defendant into the record.\(^{26}\) The vast majority of criminal cases brought to trial result in a guilty verdict.\(^{27}\)

9. The Uzbek government routinely holds political prisoners incommunicado and deprives them of access to an attorney of their choice.\(^{28}\) Despite the law requiring that relatives of detainees be informed of their detention within 24 hours, authorities delay notifying family members of a suspect’s detention.\(^{29}\)

10. Torture is widespread and used with impunity in Uzbekistan.\(^{30}\) Although prohibited by the Constitution, security officers and law enforcement routinely beat and otherwise mistreat detainees to obtain confessions, incriminating information, or for corrupt financial gain.\(^{31}\) Reports of torture and abuse - including severe beatings, denial of food, sexual abuse, simulated asphyxiation, tying and hanging by the hands and electric shock - were common in prisons, pre-trial detention facilities and local police and security

\(^{22}\) US Dep’t State Report on Human Rights, \textit{supra} note 7.
\(^{23}\) \textit{Id.}
\(^{24}\) \textit{Id.}
\(^{25}\) \textit{Id.}
\(^{26}\) \textit{Id.}
\(^{27}\) \textit{Id.}
\(^{28}\) \textit{Id.; Until the Very End, \textit{supra} note 18.}
\(^{29}\) US Dep’t State Report on Human Rights, \textit{supra} note 7; Until the Very End, \textit{supra} note 18.
\(^{31}\) \textit{Id.}
service precincts. The government has failed to meaningfully implement recommendations to combat torture made by the United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee against Torture, and other international bodies.

11. Considering the pervasiveness of torture in the criminal justice system, verdicts are too often based solely on confessions and witness testimony obtained through abuse or coercion, despite a legal prohibition on admitting such evidence. Defense counsel may request that judges reject confessions and investigate claims of torture, however, judges usually fail to respond to such claims or reject them as baseless, even when presented with credible evidence. Furthermore, claims of torture are not properly investigated by the courts; often the same authorities accused of torture are tasked with investigating the complaints of torture.

iv. Denial of Amnesty and Arbitrary Extension of Prison Terms in Uzbekistan

12. In addition to subjecting prisoners to cruel and degrading treatment, prison authorities often arbitrarily extend prison sentences of political prisoners by denying them amnesty or charging them with “violations of prison rules.” The Uzbek Senate grants approval each year for officials to grant amnesty to eligible political prisoners in the following year, subject to a case-by-case review. The amnesty excludes prisoners who “systemically have violated the terms of incarceration.” Local prison authorities have considerable discretion in determining who is eligible for release. Officials often cite vague “violations of internal prison rules” or “disobedience of legitimate orders” as a reason for denying amnesty to political prisoners. For instance, imprisoned journalist Salijon Abdurakhmanov has been found guilty of violating the terms of his detention several times, an occurrence which has prevented his release under an amnesty available to elderly prisoners. Another imprisoned journalist, Dilmurod Saidov, has been made ineligible for amnesty multiple times after prison authorities alleged he had violated prison rules and punished him with solitary confinement.

13. In addition to denying amnesty to political prisoners, authorities frequently extend the prison sentences of political prisoners by charging prisoners with “violations of prison

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32 Id.
33 Id.
34 Id.
36 Until the Very End, supra note 18.
38 Id.
39 Id.
42 Until the Very End, supra note 18.
rules.” Prison terms are regularly extended mere weeks before a prisoner’s sentence is set to expire. For instance, in 2016, imprisoned human rights defender Ganikhon Mamatkhanov’s prison term was extended days before his 8-year prison term was due to end after he was charged with infraction of prison regulations. Human rights defender and former chairperson of Ezgulik, Isroiljon Kholdorov, was sentenced to three further years in prison in 2012, with less than a year left in his original six-year prison term. He was convicted of “violations of prison rules” after he failed to “get[] up when called” and refused to lift a heavy object. Other current and former prisoners of conscience who have had their sentences increased for “violations of prison rules” include Nosim Isakov, Zafarjon Rahimov, Muhammad Bekjanov, Yusuf Ruzimuradov, Gayrat Mikhliboev, Samandar Kukanov, Murod Juraev, Rustam Usmanov, Dilorom Abdukodirova, Erkin Musaev, and Kamol Odilov.

14. This power to extend prison sentences for “violation of prison rules” is set forth in Article 221 of the Criminal Code of the Republic of Uzbekistan (the “Criminal Code”), which broadly defines “legitimate orders”; the Criminal Code is not comprehensive as to what constitutes a “violation” of these orders. A report by Human Rights Watch found that “wearing a white shirt” and “failure to properly place one’s shoes in the corner” were among some of the violations that extended prisoner’s sentences. In one case, Uzbek authorities extended the prison sentence of Murod Juraev, an opposition activist, on four separate occasions for offenses such as “incorrectly peeling carrots” and “non-removal of shoes when entering the barracks.”

15. Prisoners charged with “violations of prison rules” are often denied access to a lawyer of their choice, subjected to summary hearings within a prison that are closed to the public, and denied a meaningful opportunity to challenge the decision. Human rights activists who have monitored the practice of arbitrarily extending prison sentences of political prisoners report that the practice may affect thousands of prisoners. According to one such activist,

“There has long been an unspoken policy of using extensions [prodleniya] to keep political prisoners and anyone who could be seen as a threat to the regime incarcerated as long as possible, sometimes indefinitely. Their imprisonment continues while they slowly succumb to illness, inhumane treatment, and the deplorable conditions in which they are held.”

43 Until the Very End, supra note 18; US Dep’t State Report on Human Rights, supra note 7.
44 Until the Very End, supra note 18.
45 Until the Very End, supra note 18.
46 Until the Very End, supra note 18.
48 Until the Very End, supra note 18.
49 Id.
50 Id.
51 Id.
52 Id.
53 Id.
v. Prison Conditions in Uzbekistan

16. Prison conditions in Uzbekistan are abysmal. Prisoners suffer from overcrowding, poor and insufficient food and water quality, and minimal medical treatment, all of which amounts to serious violations of domestic and international human rights law.\(^\text{54}\) There is “routine and pervasive” torture throughout the prison system, to the extent that torture has “become [a] defining [feature] of the Uzbekistani criminal justice system.”\(^\text{55}\) There is no independent monitoring of detention centers in Uzbekistan.\(^\text{56}\)

17. The standard of medical care in the Uzbekistani prison system is generally poor with inadequate facilities, insufficient supplies of equipment and medication and few qualified medical staff. Prisoners are routinely denied medical care, even when suffering serious illness. Prisoners suffer ailments caused by or exacerbated by inadequate medical treatment and poor prison conditions.\(^\text{57}\)

18. Furthermore, prison authorities subject political prisoners to solitary confinement as a means of reprimanding dissent within the prison system.\(^\text{58}\) Prisoners in solitary confinement are held in cramped cells without bedding, and are deprived of all human contact.\(^\text{59}\)

B. The Arbitrary Detention of the Applicant

i. Initial Arbitrary Arrest and Detention of the Applicant

19. Azamjon Formonov is a well-known human rights activist whom the Government of Uzbekistan has imprisoned and subjected to torture and other ill-treatment in retaliation for his work. Prior to his initial arrest, detention and imprisonment in 2006, the Applicant served as the Chairman of the Syrdarya regional branch of the Human Rights Society of Uzbekistan, where he monitored trials and produced informational pamphlets on various human rights issues. He is also the son-in-law of Talib Yakubov, a prominent human rights activist.\(^\text{60}\)

20. As a result of his human rights work and possibly his family connection to Mr. Yakubov, on April 29, 2006, the Applicant was arbitrarily arrested and charged with extortion under Article 165 of the Criminal Code.\(^\text{61}\) The Applicant was held incommunicado for

\(^\text{54}\) See id.
\(^\text{56}\) Until the Very End, supra note 18. In April 2013, the International Committee of the Red Cross, which was the last independent monitoring body, was forced to end its visitation of Uzbek prisons and prisoners after the Uzbek government proved non-cooperative with its visitation.
\(^\text{57}\) Id.
\(^\text{58}\) Id.
\(^\text{59}\) Id.
\(^\text{60}\) Communication with AB, on file with author.
\(^\text{61}\) Id.
the first week after his arrest, and was tortured into making a false confession.62

21. On June 15, 2006, without presenting any evidence at trial or providing the Applicant the opportunity to be represented by his choice of counsel or effectively to present a defense, Yangiyer City Criminal Court found the Applicant guilty and sentenced him to nine years in a “general-condition” prison colony.63 Contrary to this sentence, Uzbekistan has since held the Applicant at UYa-64/71, commonly known as Jaslyk prison – a strict-regime prison colony which is known notoriously as the worst prison in the country.64

22. In 2011, a petition was filed with the Working Group regarding the Applicant’s unjust imprisonment; on November 22, 2012 the Working Group issued an opinion confirming that his detention was arbitrary.65 On September 3, 2014, a petition was filed on behalf of the Applicant with the Committee under the First Optional Protocol of the International Covenant on Civil and Political Rights (“ICCPR”).66

23. For the first several years after his imprisonment, the Applicant was sporadically tortured by the prison guards, including an incident in May or June 2007, in which the Applicant was incarcerated in an isolation cell and his legs and feet were beaten so severely he was unable to walk for 10 days; an incident in October 2007 where the Applicant was placed in an unheated isolation cell for 10 days and beaten by the authorities; and incidents in 2008 and 2011 in which the Applicant was beaten in order to coerce him into signing various positive statements regarding his prison conditions.67

24. Despite such abuse, while in prison, the Applicant has spoken out about the injustices of his conviction and detention, and has demanded that his rights be respected. In February 2012, the Applicant conducted a hunger strike to protest his lack of access to the head of the prison colony to discuss his torture and the lack of visitation rights with his family.68 In 2015, he wrote a letter to Secretary General Ban Ki Moon complaining of the torture that he had endured while incarcerated. Despite strict limitations on communication between prisoners and the outside world, the Applicant was able to smuggle the letter out and publish it online.69

63 Verdict of Yangiyer City Criminal Court, (June 15, 2006) (translated), on file with author.
64 Communication with AB, supra note 60.
66 This petition is currently pending before the Committee.
69 Communication with AB, supra note 60.
25. Additionally, the Applicant has consistently refused demands to sign false confessions admitting he has broken prison regulations. As discussed in paragraph 12 above, Uzbekistan regularly charges political prisoners with specious violations of prison regulations in order to deny their eligibility for yearly amnesties. Here, prison officials spuriously charged the Applicant with one or two such violations every year. According to Uzbekistan, as of October 25, 2016, the Applicant had received 20 punishments for such alleged infractions.\(^{70}\)

26. Each time the Applicant was charged with violating prison regulations, he resisted signing the prepared confession, stating its allegations were false. Prison officials documented his resistance to sign these confessions.\(^{71}\)

ii. Arbitrary Extension of Initial Sentence

27. As the end of his initial sentence approached, the Applicant suspected that his prison term would be extended, in line with Uzbekistan’s documented practice of arbitrarily extending the sentences of its political prisoners. In January 2015, just a few months before his sentence was set to expire, the Applicant told his wife not to be hopeful about his release.\(^{72}\)

28. Shortly thereafter, the Applicant was accused of a series of minor prison infractions.\(^{73}\) First, the Applicant was accused of insulting inmate Kh. Kholmatov on January 24, 2015 by approaching him in the bathroom and saying: “Stay away knuckbone, you stink, why don't you take a bath like a human being?”\(^{74}\) For this alleged infraction, the Applicant was placed in a punishment cell for five days on the basis of Decision No. 45, dated January 24, 2015, by the head of the prison administration.\(^{75}\)

29. Just three weeks later, the Applicant was accused of insulting another inmate, Kh. Shukurov, during an outdoor walk on February 17, 2015.\(^{76}\) Mr. Shukurov allegedly requested the inmates form a line, to which the Applicant allegedly responded, "Mind your own business you dog, I will take care of myself."\(^{77}\) For this alleged infraction, the Applicant was placed in an isolation cell for ten days on the basis of Decision No. 93, dated February 17, 2015, issued by the head of prison administration.\(^{78}\)

\(^{70}\) Uzbekistan’s Response, dated October 25, 2016, to Petition submitted to the UN Human Rights Committee on behalf of Azamjon Formonov, dated September 3, 2014 (translated), on file with author [hereinafter “Uzbekistan’s Response”].

\(^{71}\) Communication with AB, supra note 60.

\(^{72}\) Id.

\(^{73}\) Id.

\(^{74}\) Id., at 1.

\(^{75}\) Id., at 1.

\(^{76}\) Id., at 2.

\(^{77}\) Id., at 2.

\(^{78}\) Id., at 2.
30. A further three weeks later, the Applicant allegedly had yet another encounter with a third inmate, M. Sharipboev, when M. Sharipboev called on inmates to sit properly while watching TV. The Applicant allegedly responded, "Everyone is sitting properly, do not act as the cleverest person here, you are just an inmate like me, you are chicken, don't lecture me." For this alleged infraction, the Applicant was placed in an isolation cell for twenty days on the basis of Decision No. 149, dated March 9, 2015, issued by the head of the prison administration. He was sentenced to twenty days of imprisonment despite the fact that Article 109 of the Criminal Procedure Code of Uzbekistan stipulates a 15 day maximum sentence.

31. Finally, the Applicant was accused of failing to wear a distinguishing badge on his chest and the sleeve of his uniform on March 20, 2015. For this infraction, he was issued a warning on the basis of Decision No. 175, dated March 30, 2015, issued by the head of the prison administration.

32. Each time the Applicant faced an isolation cell punishment, he was transferred to a unit which only housed prisoners serving life sentences. He was kept in a cell with an iron bed and no mattress or other bedding, which made it difficult for him to sleep. His clothes were taken from him and he was given only a thin robe to wear, without underclothes or socks; the temperature in his cell was very cold.

33. The Applicant was also tortured while in isolation. Prison officials put a rubber head gear on his head which suffocated him and caused him to pass out several times. He was placed where he could hear other prisoners being tortured, and he was forced to listen to their screaming all day and night. The prison authorities warned him that if he did not sign a confession admitting to his violations, he would face this same fate. The prison authorities also told the Applicant that they would release him if he confessed to just one of the violations. Under this intense psychological pressure and believing his release depended on it, the Applicant eventually signed a confession to one of the violations.

34. Then, mere weeks before his nine-year sentence was set to end, Uzbekistan arbitrarily
charged the Applicant with “disobeying the legal demands of the administration of a correctional facility” under Article 221 of the Criminal Code. The charge focused on the four alleged misconduct violations that occurred just a few months prior to the Applicant’s initial release date, including the one to which he had been forced to confess.

### iii. Arbitrary Prosecution of the Applicant

36. The Applicant was formally notified of the charges against him on April 25, 2015. He was subsequently taken to Nukus City, the capital of Karakalpakstan, to face trial. The Applicant’s trial was held on May 1, 2015, and lasted only one day. Although the sentencing judgment states the hearing was “open,” the Applicant’s family members were not informed of the hearing, nor even of the charges against him, and were therefore prevented from attending. Additionally, no members of the public or the press were in attendance. The Applicant was not represented by an attorney. When he asked for a lawyer, the judge told him, “You are a human rights activist, you know your rights, you don’t need one.”

37. The Applicant entered the courtroom in shackles and remained restrained during the trial. The prosecution called as witnesses several Jaslyk prison guards: Davlatov Parxat Saparbaevich, Abdmajyidov Abdibet Aleutadinovich, Djumagulov Suyishbek Tlegenovich, Yusupov Dilshod Turamuratovich, and Toremuratov Sobil Otashevich. These witnesses testified that the Applicant was a good person but that he had some minor misconduct violations before his release. However, none of the witnesses was able to specify what the Applicant had allegedly done. At one point the judge, angered by this noncommittal testimony, shouted, “Why are you here if you are saying he is a good person?” The court also entered into evidence the witness statement of one prison guard who did not attend the hearing. The Applicant was not given a chance to cross-examine any of the witnesses.

38. At the trial’s end, the Applicant was permitted to read a statement in his defense. In this statement, he rebutted the testimony of the guards, pointing out that the video footage captured by the cameras which filmed every part of the prison would show that he had not committed the violations he was charged with. The judge declined to examine this

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93 See Uzbekistan’s Response, supra note 70.
94 Communication with AB, supra note 60.
95 Id.; Sentencing Judgment, supra note 74.
96 Communication with AB, supra note 60.
97 Id.
98 Communication with AB, supra note 60; Supervisory Review Appeal, supra note 82.
99 Communication with AB, supra note 60.
100 Id.
101 Communication with BC, on file with author.
102 Communication with AB, supra note 60.
103 Id.
104 Sentencing Judgment, supra note 74, at 2-4.
105 Communication with AB, supra note 60.
106 Id.
evidence, however.\textsuperscript{107} The Applicant also urged the judge to consider that he was about to complete his first prison term and that he had young children.\textsuperscript{108}

39. Despite this defense, the Kunigrat criminal court of the Kungradsky district of the Republic of Karakalpakstan convicted the Applicant on all four charges and sentenced him to a further five years and twenty-six days imprisonment.\textsuperscript{109} The judge gave no explanation for his decision.\textsuperscript{110}

40. The Applicant’s wife hired an attorney who submitted an appeal to the Superior Court of Karakalpakstan on his behalf on January 25, 2017. The cassation court denied the appeal without explanation. The Applicant’s attorney then appealed to the Supreme Court of the Republic of Karakalpakstan, which upheld the cassation court’s decision on March 1, 2017. The Applicant’s attorney appealed his case to the Supreme Court of Uzbekistan on March 27, 2017, and is currently awaiting its decision.\textsuperscript{111}

41. The Applicant was not allowed to meet with his attorney during the appeals process. When his attorney attempted to visit the Applicant in prison, she was turned away at the gates by the prison guards, who said, “A lawyer never steps into this prison, so don’t even bother to get inside.”\textsuperscript{112}

\textbf{iv. Current Status}

42. Currently, the Applicant remains imprisoned in Jaslyk, where he has spent the last eleven years of his life. According to Uzbekistan, as of October 25, 2016, the Applicant was subject to two further disciplinary remands for infractions of prison regulations allegedly committed on February 5, 2016 and May 6, 2016.\textsuperscript{113} Uzbekistan has not clarified what these alleged infractions are. A third “infraction” may have occurred on May 19, 2017, when a prison guard, Azamat Khudoyberganov, threatened to tear apart the Applicant’s robe, which he was using as a cushion for a hard seat.\textsuperscript{114} The Applicant’s lackadaisical response to go ahead and tear up the robe upset Mr. Khudoyberganov, who threatened to put him back in solitary confinement and documented the Applicant’s “misbehavior” as yet another violation of prison regulations.\textsuperscript{115}

43. Mr. Formonov was also unable to speak with the representative of the Ombudsman of Uzbekistan who came to visit the prison.\textsuperscript{116} When Mr. Formonov attempted to meet with him, prison guards blocked his way.\textsuperscript{117} Nonetheless, the representative of the
Ombudsman was later reported to have met with all of the prisoners.\textsuperscript{118}

44. The Applicant’s health continues to worsen. His body is covered in pustules the size of walnuts and he experiences pain in his kidney from time to time. At one point, the pain in his kidney became so intense that the prison medical staff were prepared to perform an appendectomy until the Applicant told them he had already had his appendix removed. The Applicant is also forced to drink salty water. While he is not currently being physically abused, he suffers from a lack of physical movement and intense psychological pressure.\textsuperscript{119}

45. Mr. Formonov is able to receive visits from his wife and children every few months. However, recently the prison has taken to cutting off any phone calls he has with his family after 2 minutes.\textsuperscript{120}

II. Legal Analysis

46. The arrest and detention of the Applicant is arbitrary\textsuperscript{121} under Categories II and III as established by the Working Group. The detention is arbitrary under Category II because it resulted from the Applicant’s peaceful exercise of his right to freedom of expression. The detention is arbitrary under Category III because the government’s detention and prosecution of the Applicant failed to meet minimum international standards of due process.

A. Category II

47. The continued detention of the Applicant for allegedly violating various prison regulations is a response to his staunch defense of human rights even from his jail cell and is therefore arbitrary under Category II. A detention is arbitrary under Category II when it results from the exercise of fundamental rights or freedoms protected under international law, including the right to freedom of expression.\textsuperscript{122}

\textsuperscript{118} Id.
\textsuperscript{119} Communication with AB, supra note 60.
\textsuperscript{120} Communication with BC.
\textsuperscript{121} An arbitrary deprivation of liberty is defined as any “depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law.” \textit{International Covenant on Civil and Political Rights}, G.A. Res 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 UNT.S. 171, entered into force 23 March 1976, at art. 9(1) [hereinafter “ICCPR”]. Such a deprivation of liberty is specifically prohibited by international law. \textit{Id.} “No one shall be subjected to arbitrary arrest, detention or exile.” \textit{Universal Declaration of Human Rights}, G.A. Res. 217A (III), UN Doc. A/810, at art. 9, (1948) [hereinafter “UDHR”]. “Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law…” \textit{Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment}, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, UN Doc. A/43/49 (1988), at principle 2, [hereinafter “Body of Principles”].
\textsuperscript{122} A detention is arbitrary under Category II “when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights.” \textit{Methods of Work of the Working Group on Arbitrary Detention}, UN Doc. A/HRC/33/66, ¶ 8b, (12 July 2016) (hereinafter Revised Methods of Work).
48. The right to freedom of expression is expressly protected under international and Uzbek law. Article 19(2) of the ICCPR, to which Uzbekistan is party, provides that “[e]veryone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Article 19 of the ICCPR is of special importance for human rights defenders. The UN Working Group on Arbitrary Detention (“Working Group”) has recognized the right of human rights defenders “to investigate, gather information regarding and report on human rights violations.” The right to free expression is also protected by Article 19 of the Universal Declaration of Human Rights (“UDHR”), to which Uzbekistan is bound. Further, Article 29 of the Uzbek Constitution likewise confirms that “Everyone shall be guaranteed freedom of thought, speech and convictions.”

49. Along with these express protections set forth in international and domestic law, the imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny. The concept of a human rights defender is codified under the UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, unanimously adopted by the UN General Assembly on 9 December 1998 (Declaration on Human Rights Defenders). The Declaration on Human Rights Defenders affirms their role at the local, regional, national, and international levels. The UN General Assembly and Human Rights Council (formerly the Commission on Human Rights) have since regularly reaffirmed the rights of human rights defenders to conduct their work. Moreover, the Working Group has recognized the necessity to “subject

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123 ICCPR, supra note 121, at art. 19(2).
125 UDHR, supra note 121, at art. 19.
127 Human rights defenders are individuals who promote and protect all human rights through peaceful means without discrimination. Human rights defenders can join groups of people with or without structure, or organizations such as associations or foundations. Anyone, regardless of their occupation, can be a human rights defender; they are defined primarily by what they do rather than their profession. See generally, Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Resolution 53/144, UN Doc. A/RES/53/144, (8 Mar. 1998).
interventions against individuals who may qualify as human rights defenders to particularly intense review." This “heightened standard of review” by international bodies is especially appropriate where there is a “pattern of harassment” by national authorities targeting such individuals.

50. Here, the Uzbek government arbitrarily detained and prosecuted the Applicant as a direct result of his speech, in his capacity as a defender of human rights from his jail cell (and beyond). As set forth in paragraphs 4 through 7 above, the Uzbek government has a well-documented pattern of attacking and silencing Uzbek human rights activists through arbitrary detention. Moreover, as discussed in paragraph 12 through 15 above, the Uzbek government also regularly engages in the practice of arbitrarily extending the prison terms of such prisoners of conscience in order to further punish any such person for past dissenting speech and to prevent him or her from raising his critical voice again.

51. Considering this pattern, it is clear that the authorities chose to charge the Applicant with a new slate of absurd prison rule infractions in order to prevent his scheduled release from prison. The Applicant was not only well known for his pre-incarceration human rights defense work, but he had demonstrated clearly while in prison that he was not afraid to continue fighting for the rights of himself and others. As detailed in paragraphs 24 through 26 above, even from his jail cell the Applicant conducted a hunger strike to protest his prison conditions and torture; wrote a letter to the UN Secretary General regarding such torture and prison conditions; authorized the filing of a petition with the Working Group and under the First Optional Protocol to the ICCPR before the Committee; and refused many times to bow to the unlawful pressure of the prison guards demanding that he sign false confessions.

52. The second slate of charges against the Applicant can be seen both as an attempt to silence him in violation of his right to freedom of speech and as retaliatory measures for his submission of a petition with Working Group and with the Committee, his attempt to reach out the UN General Secretary and his refusal to bend to the prison authorities’ demands. In the Guidelines against Intimidation or Reprisals (“San José Guidelines”), the Chairs of the UN human rights treaty bodies strongly condemned acts of reprisal against individuals seeking to cooperate with the UN mechanisms and noted that everyone should have freedom from “any form of intimidation or reprisals, or fear of intimidation or reprisals.” The San José Guidelines also confirmed state responsibility “to avoid acts constituting intimidation or reprisals and to prevent, protect against, investigate and ensure accountability and to provide effective remedies to victims of such acts or omission.” The Human Rights Council has likewise expressed its concern about reprisals against individuals seeking to cooperate with the UN human rights mechanisms

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131 Chairpersons of the Human Rights Treaty Bodies, Guidelines against Intimidation or Reprisals (“San José Guidelines”), HRI/MC/2015/6, ¶¶ 1, 5(b) (30 July 2015).
132 Id., at ¶ 5(c).
and representatives and has strongly condemned all such acts. Most forcibly, the UN Secretary General “stressed the absolute unacceptability of any act of intimidation or reprisal, no matter how seemingly subtle or explicit, against individuals . . . for seeking to cooperate, cooperating or having cooperated with the United Nations in the field of human rights.”

53. The fact that the second slate of charges against the Applicant was a mere pretext for keeping him in prison past his initially scheduled release date is demonstrated by the absurd nature of the charges against him. Effectively, the Applicant was sentenced to five additional years in prison for a collection of alleged offenses which, even if taken 100 percent to be true (which the Applicant denies), still only amount to the Applicant having given a handful non-violent retorts to his fellow inmates and guards and his failure to wear a distinguishing badge. The extensive solitary confinement imposed on the Applicant after such alleged infractions was already disproportionate to the infractions themselves—however adding an additional five years to his prison time demonstrates an egregious lack of proportionality. Moreover, none of the Applicant’s alleged retorts threaten or incite violence or amount to hate speech; thus, any additional detention of the Applicant for allegedly unpleasant words which are nonetheless fully within his right to free speech is impermissible.

54. In sentencing the Applicant to an additional five years’ imprisonment for a slew of alleged and de minimis infractions—which themselves fall within the Applicant’s right to free expression—Uzbekistan continues to punish the Applicant for his past and current defense of human rights and for his engagement with UN human rights mechanisms; the Applicant’s continuing detention will also hamper his ability to speak out critically while he remains behind bars. In doing so, Uzbekistan has violated the Applicant’s right to free expression under Article 19(2) of the ICCPR, Article 19 of the UDHR and Article 29 of the Constitution.

B. Category III

55. The arrest and detention of the Applicant is arbitrary under Category III. A deprivation of liberty is arbitrary under Category III where “the total or partial non-observance of the international norms relating to the right to a fair trial… is of such gravity as to give the deprivation of liberty an arbitrary character.” The minimum international standards of due process applicable in this case are established by the ICCPR, the UDHR, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“Body of Principles”) and the United Nations Standard Minimum Rules

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135 *Methods of Work of the Working Group on Arbitrary Detention*, UN Doc. A/HRC/33/66, ¶ 8(c), (July 12, 2016) [hereinafter “Revised Methods of Work”].
for the Treatment of Prisoners (“Nelson Mandela Rules”).

i. Uzbekistan Violated the Applicant’s Right not to be Subjected to Arbitrary Arrest

56. Article 9(1) of the ICCPR, which confirms the right to liberty and freedom from arbitrary detention, guarantees that “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” This right is reiterated by Article 9 of the UDHR and Principles 2 and 36(2) of the Body of Principles. The Committee has interpreted this right to mean that “procedures for carrying out legally authorized deprivation of liberty should also be established by law and States parties should ensure compliance with their legally prescribed procedures.” Article 9(1) requires compliance with domestic rules that define such procedures for arrest such as permitting access to counsel. The Committee has previously found that an arrest which was done in the absence of a detainee’s counsel, in violation of the relevant domestic provisions, violated Article 9(1) of the ICCPR.

57. Under Uzbek law, the arresting authority is required to notify a relative of a detainee about the detention. Detainees have the right to legal counsel from the time of arrest, have the right to remain silent and must be informed of the right to counsel.

58. Here, the arrest of the Applicant was not performed in compliance with Uzbek law. The authorities did not inform the Applicant’s family of the new charges against him, his transfer to the Nukus City prison, or his imminent hearing. The arrest also does not comply with the Uzbek law which guarantees that detainees be provided with the assistance of counsel from the moment of apprehension. The authorities failed to inform the Applicant of his right to counsel or to allow him to consult with counsel of his choosing. Finally, the Applicant was tortured in order to elicit a confession, a direct violation of his right to remain silent under Uzbek law.

59. Such unlawful actions violated the Applicant’s right to freedom from arbitrary arrest under Article 9(1) of the ICCPR, Article 9 of the UDHR and Principles 2 and 36(2) of the Body of Principles.

ii. Uzbekistan Violated the Applicant’s Right to Freedom from Torture and

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136 In making a Category III determination, the Working Group will look to the norms “established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned.” Id., at ¶ 8(c). However, the Revised Methods of Work also explain that where appropriate, the Working Group will refer to standards established under the Body of Principles and the Nelson Mandela Rules. Id., at ¶ 7(a) and (b).

137 ICCPR, supra note 121, at art 9(1).

138 UDHR, supra note 121, at art 9; Body of Principles, supra note 121, at Principles 2 and 36(2).

139 UN Human Rights Committee, General Comment No. 35, UN Doc. CCPR/C/GC/35, ¶ 23, (December 16, 2014).

140 Id.


142 Id.

143 Article 48 of the Criminal Procedure Code of the Republic of Uzbekistan.

Cruel, Inhuman or Degrading Treatment or Punishment

60. The right to freedom from cruel, inhuman and degrading treatment and torture is well protected by international and Uzbek law. Article 7 of the ICCPR guarantees that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 10(1) of the ICCPR further provides that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” This right is reiterated by Article 5 of the UDHR, Articles 1, 2 and 16(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) -- to which Uzbekistan is party -- Principles 1 and 6 of the Body of Principles, and Rule 1 of the Nelson Mandela Rules. In addition, Article 26 of the Constitution guarantees citizens the right to freedom from torture and Article 17 of the Criminal Procedure Code provides that “nobody may be subject to violence, torture or other cruel or degrading treatment.”

a. Use of Torture as an Interrogatory Tool

61. Article 14(3)(g) of the ICCPR specifically prohibits the infliction of physical or mental pain or suffering by a public official with the intention to coerce a confession. International law’s particular concern with torture as an interrogatory tool is further reflected in the definition of torture in CAT, which defines the term as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession . . . .”, as well as in Principle 21(2) of the Body of Principles which guarantees that “no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.”

62. Uzbekistan’s treatment of the Applicant during interrogation violates international and domestic law on the prohibition of torture. While being held in solitary confinement, the Applicant was tortured and forced to sign a confession. His captors suffocated him by forcing him to wear a rubber head gear, causing him to pass out. He was also subjected night and day to the agonized screams of his fellow prisoners being tortured within earshot of his cell, and told he would face the same fate if he did not sign a confession. He was made to believe that his release depended upon his signing a confession; he eventually succumbed to this pressure and signed a false confession.

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145 ICCPR, supra note 121, at art. 7
146 Id., at art. 10(1).
149 ICCPR, supra note 121, at art. 14(3)(g).
150 CAT, supra note 147, at art. 1(1).
151 Body of Principles, supra note 121, at Principle 21(2). Also, “it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess...” Id., at Principle 21(1).
63. In its brutal attempt to obtain forced confessions through torture, Uzbekistan has violated the Applicant’s right to be free from cruel, inhuman, or degrading treatment and torture under Articles 7, 10(1) and 14(3)(g) of the ICCPR, Article 5 of the UDHR, Articles 1, 2 and 16(1) of the CAT, Principles 1, 6 and 21(2) of the Body of Principles, Rule 1 of the Nelson Mandela Rules, Article 26 of the Constitution, and Article 17 of the Criminal Procedure Code.

b. Use of Prolonged Solitary Confinement as Punishment and Poor Prison Conditions

64. The Committee against Torture has concluded that the use of solitary confinement in prisons should be abolished or strictly and specifically regulated152 and General Comment No. 20 to the ICCPR confirms that prolonged solitary confinement can amount to acts prohibited by Article 7 of the ICCPR.153 The UN Special Rapporteur on Torture and other cruel, inhuman and degrading treatment or punishment ("Special Rapporteur on Torture") dedicated an entire report to the use of solitary confinement, concluding that "where the physical conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering, when used as a punishment, . . . it can amount to cruel, inhuman or degrading treatment or punishment and even torture."154 This report specifically confirmed that:

“Solitary confinement, when used for the purpose of punishment, cannot be justified for any reason, precisely because it imposes severe mental pain and suffering beyond any reasonable retribution for criminal behaviour and thus constitutes an act defined in article 1 or article 16 of the Convention against Torture, and a breach of article 7 of the International Covenant on Civil and Political Rights. This applies as well to situations in which solitary confinement is imposed as a result of a breach of prison discipline, as long as the pain and suffering experienced by the victim reaches the necessary severity.”155

65. Moreover, Rules 43(1)(b) and 45 of the Nelson Mandela Rules prohibit the use of “prolonged solitary confinement” and specify respectively that “solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority.”156

153 UN Human Rights Committee, CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), ¶ 6, (March 10, 1992), available at http://www.refworld.org/docid/453883f60.html.
155 Id., at ¶ 72.
156 Nelson Mandela Rules, supra note 147, at rules 43(1)(b) and 45.
66. In addition to prolonged use of solitary confinement, the Committee, the UN Human Rights Council, the UN High Commissioner for Human Rights, and the Special Rapporteur on Torture have determined that poor prison conditions can also amount to torture or cruel and inhumane punishment. In particular, the Committee has called out “severe overcrowding and the poor quality of basic necessities and services, including food, clothing and medical care” as evidence of ill-treatment by the authorities. Setting forth the standards for appropriate prison conditions, Rules 13 and 19(1) of the Nelson Mandela Rules specify that sleeping accommodations should “meet all requirements of health, due regard being paid to the climactic conditions and particularly to … heating,” and that prisoners be “provided with an outfit of clothing suitable for the climate . . . .”. Rule 21 of the Nelson Mandela Rules states that every prisoner should be “provided with a separate bed and with separate and sufficient bedding.” Principle 19 of the Body of Principles states that detainees “have the right to be visited by and to correspond with … members of his family and shall be given adequate opportunity to communicate with the outside world.

67. Uzbekistan’s treatment of the Applicant during his detention violates international and domestic law on the prohibition of cruel, inhuman or degrading treatment. The Applicant was held in solitary confinement on at least three occasions, for five days, ten days, and then twenty days, as a punishment for alleged violation of prison rules. While in solitary confinement, he was deprived of human contact and was held in inhumane conditions. His cell contained only an iron bed without bedding and he was constantly cold, as his cell was a frigid temperature and he had only a thin robe to wear.

68. Moreover, the Applicant continues to be kept in poor prison conditions at Jaslyk Prison, a facility notorious for its harsh conditions despite lack of access for independent monitors. The Committee against Torture has expressed particular concern about conditions at the prison, which is referred to as “The House of Torture” by many Uzbeks. Jaslyk Prison is notorious for having boiled prisoners alive, for subjecting

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158 Concluding Observations on Argentina, supra note 157, at ¶ 11.
159 Id., at rules 13 and 19(1).
160 Id., at rule 21.
prisoners to solitary confinement, and for its location in a harsh climate which exposes prisoners to extremely cold winters and hot and dry summers.\textsuperscript{164}

69. The Applicant suffers undiagnosed and untreated chronic pain in his kidney, his body is covered in undiagnosed pustules the size of walnuts, and he is forced to drink salty water. He is restricted in his contact with his family, who are only allowed four visits per year and cannot speak with him on the phone for longer than two minutes, and the outside world.

70. In subjecting the Applicant to solitary confinement as a means of punishment and to poor prison conditions, Uzbekistan has violated the Applicant’s right to be free from cruel, inhuman and degrading treatment under Articles 7 and 10(1) of the ICCPR, Article 5 of the UDHR, Principles 1, 6 and 19 of the Body of Principles, Rules 1, 13, 19(1), 21, 43(1)(b), and 45 of the Nelson Mandela Rules, Article 16(1) of the CAT, and Article 17 of the Criminal Procedure Code.

iii. Uzbekistan Violated the Applicant’s Rights to Equality before the Court and a Fair Hearing by an Independent and Impartial Tribunal Established by Law

71. Article 14(1) of the ICCPR guarantees the right “to a fair and public hearing by a competent, independent and impartial tribunal established by law.”\textsuperscript{165} Article 10 of the UDHR reiterates this requirement.\textsuperscript{166}

a. Fair and Public Hearing

72. The Committee has emphasized the importance of a public hearing as it “ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large.”\textsuperscript{167} A public hearing requires that the hearing be open to the general public, including media\textsuperscript{168} and that courts “make information regarding the time and venue of the oral hearings available to the public.”\textsuperscript{169} Moreover, the Committee has specified that the fairness standard must be measured by an objective “reasonableness standard” – that is, the court must appear to a reasonable observer to be impartial.\textsuperscript{170} If, for example, a court fails to prevent or remedy serious procedural mistakes or to provide a duly-reasoned judgment, this would indicate to a reasonable observer that the proceedings are not “fair.”

73. The Applicant’s trial was closed to the general public, including the media and the Applicant’s family, who were not even informed of the hearing. The hearing was also unfair, as demonstrated by the length of the Applicant’s resulting sentence. Despite the

\textsuperscript{164} Id.
\textsuperscript{165} ICCPR, supra note 121, at art 14(1).
\textsuperscript{166} UDHR, supra note 121, at art. 10.
\textsuperscript{167} UN Human Rights Committee, General Comment No. 32, UN Doc. CCPR/C/GC/32, ¶ 28, (August 23, 2007).
\textsuperscript{168} Id., at ¶ 29.
\textsuperscript{169} Id., at ¶ 28.
\textsuperscript{170} Id., at ¶ 21.
Applicant’s alleged violations being nonviolent disagreements with fellow prisoners and a one-time failure to wear a badge, the Applicant was sentenced to five further years in prison, the maximum sentence under the law. In rendering this conviction and sentence, the judge failed to give an explanation for his decision.

74. The private and unfair nature of the hearing violated the Applicant’s right to a “fair and public hearing” in contravention of Article 14(1) of the ICCPR and Article 10 of the UDHR.

**b. Judicial Independence and Impartiality and Equality before the Courts**

75. The requirement of judicial independence under Article 14(1) establishes an objective standard, which is treated as an “absolute requirement[] not capable of limitation.”\(^{171}\) As noted by the Committee, “The requirement of independence refers, in particular, to . . . . the actual independence of the judiciary from political interference by the executive branch and the legislature.”\(^{172}\)

76. Given that all judges are appointed by the president for renewable five-year terms, the Uzbek courts do not, in practice, operate free from political interference. Furthermore, as discussed in paragraph 11 above, the vast majority of cases brought by prosecutors result in convictions with verdicts often being based solely on confessions and witness testimony obtained through abuse or coercion. In fact, in the instant case, the Applicant’s own confession was coerced by torture.

77. Article 14(1) of the ICCPR also demands that “all persons shall be equal before the courts and tribunals” which means that the prosecution and the defense must enjoy equality of arms.\(^{173}\) Effectively, equality of arms requires that both parties have the same procedural rights and, specifically, that “each side be given the opportunity to contest all the arguments and evidence adduced by the other party.”\(^{174}\)

78. Here, the hearing was not impartial, as the prosecution was permitted to present witnesses whose testimony the court heard and considered, but the Applicant’s video evidence was not examined by the court. Despite the Applicant testifying that the prison’s cameras would reveal whether he had committed the alleged violations, the judge did not view the videos before rendering his decision. Moreover, the prosecution’s case was argued by an attorney, while the Applicant had no access to counsel. The judge openly demonstrated his bias when he scolded the prosecution’s witnesses for failing to provide damning testimony against the Applicant.

79. The Uzbekistan government’s failure to maintain an independent judiciary, the court’s refusal to allow the Applicant to present any witnesses in his defense, as well as its

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\(^{171}\) Alex Conte & Richard Burchill, *Defining Civil and Political Rights*, 165, (Ashgate 2009 2nd ed.).

\(^{172}\) General Comment No. 32, *supra* note 167, at ¶ 13.

\(^{173}\) ICCPR, *supra* note 121, at art 14(1). This right is also embedded in Article 10 of the UDHR. UDHR, *supra* note 121, at art. 10.

failure to examine the evidence he presented – while at the same time allowing the use of evidence by the prosecution that was procured by torture – demonstrates a clear bias in favor of the prosecution in violation of the requirement that the tribunal be impartial and independent, as guaranteed by Article 14(1) of the ICCPR and Article 10 of the UDHR.

iv. **Uzbekistan Violated the Applicant’s Right to a Presumption of Innocence**

80. Article 14(2) of the ICCPR provides that “[e]veryone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.” Article 11(1) of the UDHR and Principle 36(1) of the Body of Principles also guarantee this right. The Committee has further confirmed that the presumption of innocence is “fundamental to the protection of human rights.” Moreover, “[d]efendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.”

81. The government violated the Applicant’s right to the presumption of innocence by presenting the Applicant to the court in shackles and keeping the Applicant in restraints during the trial, an indication of guilt which has been specifically decried by the Committee. The fact that the Applicant’s guilt was presumed is also evidenced by the clear manufacturing of inane charges against him; charges which were supported through use of a torture-elicited confession, which resulted in a severely disproportionate sentence for the infractions alleged and, which, as discussed in paragraphs 12 through 15 above, fit precisely into Uzbekistan’s pattern of accusing human rights defenders of absurd infractions to extend their prison sentence. In presenting the Applicant as guilty in court and in manufacturing the charges, the government violated the Applicant’s right to the presumption of innocence under Article 14(2) of the ICCPR, Article 11(1) of the UDHR and Principle 36(1) of the Body of Principles.

v. **Uzbekistan Violated the Applicant’s Right to Communicate with Counsel and to Defend Himself through Legal Assistance**

82. Article 14(3)(b) of the ICCPR guarantees a criminal defendant the right “to communicate with counsel of his own choosing.” The Committee has clarified that such guarantee “requires that the accused is granted prompt access to counsel” and that “[s]tate parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.” Principles 18(1) and (3) of the Body of Principles and Rule 61 of the Nelson Mandela Rules further guarantee a detainee’s right to communicate with his legal counsel without delay and that such right “may not be suspended or restricted.

175 ICCPR, supra note 121, at art. 14(2).
176 UDHR, supra note 121, at art. 11(1); Body of Principles, supra note 121, at Principle 36(1).
177 General Comment No. 32, supra note 167, at ¶ 30.
178 Id.
179 Id.
180 ICCPR, supra note 121, at art. 14(3)(b).
181 General Comment No. 32, supra note 167, at ¶ 34.
182 General Comment No. 35, supra note 139, at ¶ 35.
save in exceptional circumstances . . . ”. Likewise, Principles 15 and 16(1) of the Body of Principles provide that a prisoner’s communication with his family or counsel cannot be restricted “for more than a matter of days” and guarantee a detainee’s right to “[p]romptly” notify his family of his transfer and of the place of his detention. Principle 29(2) of the Body of Principles further guarantees detainees the right “to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment . . . .”.

83. Additionally, Article 14(3)(d) of the ICCPR provides that everyone has the right “to defend himself in person or through legal assistance of his own choosing . . . .” This right is affirmed in Principle 17(1) of the Body of Principles and Rule 41(3) of the Nelson Mandela Rules. Rule 41(5) of the Nelson Mandela Rules specifically guarantees a prisoner’s right to due process and “unimpeded access” to counsel “in the event that a breach of discipline is prosecuted as a crime.”

84. Pursuant to Uzbek domestic law, “an accused shall have the right to use assistance of a defense counsel and to have meetings with him in private.” Furthermore, all suspects are entitled “to have assistance of a defense counsel from the moment of declaring him the resolution on prosecution him as a suspect, or after the apprehension.”

85. Here, the Applicant was denied the ability to communicate with a lawyer as guaranteed by international and domestic law. After being formally made aware of the new charges against him, he was held incommunicado and denied his right to communicate with an attorney who could assist him in preparing his defense. He was also prevented from informing his family of his transfer to Nukus City for trial.

86. The government also denied the Applicant’s right to be assisted by counsel at trial. The judge’s response to his request for counsel at trial was a blatant denial of the Applicant’s right to counsel. Under both international and Uzbek law, all criminal defendants, regardless of their knowledge of their rights, enjoy the right to an attorney; such right cannot be abrogated because a defendant is a human rights activist.

87. Uzbekistan continued to violate the Applicant’s right to communicate with and be assisted by counsel during his appeal to the Superior Court of Karakalpakstan and to the Supreme Court of Uzbekistan. The Applicant was not permitted to meet with the attorney hired by his family during the appeals process. When the Applicant’s attorney attempted to meet him in prison, she was turned away at the gates and told lawyers are not allowed to set foot in the prison.

183 Body of Principles, supra note 121, at Principle 18(1) and (3); Nelson Mandela Rules, supra note 147, at rule 61.
184 Body of Principles, supra note 121, at Principles 15 and 16(1).
185 Id., at Principle 29(2).
186 ICCPR, supra note 121, at art. 14(3)(d).
187 Body of Principles, supra note 121, at Principle 17(1); Nelson Mandela Rules, supra note 147, at rule 41(3).
188 Nelson Mandela Rules, supra note 147, at rule 41(5).
88. In denying the Applicant the ability to communicate with and be assisted by an attorney prior to and during his trial and appeal the Uzbekistan government violated the Applicant’s right to counsel under Articles 14(3)(b) and 14(3)(d) of the ICCPR, Principles 15, 16(1), 17(1), 18(1), 18(3), and 29(2) of the Body of Principles, and Rules 41(3), 41(5), and 61 of the Nelson Mandela Rules.

vi. Uzbekistan Violated the Applicant’s Right to Have Adequate Time for the Preparation of His Defense

89. Under Article 14(3)(b) of the ICCPR, an individual enjoys the right “to have adequate time and facilities for the preparation of his defence.”\textsuperscript{191} This right is reiterated specifically by Principle 18(2) of the Body of Principles and Rule 41(2) of the Nelson Mandela Rules, and, more generally, by Principle 11(1) of the Body of Principles which provide for a right to defense.\textsuperscript{192} The Committee has confirmed that “[t]his provision is an important element of the guarantee of a fair trial and an application of the principle of equality of arms . . . .what counts as ‘adequate time’ depends on the circumstances of each case.”\textsuperscript{193}

90. The Applicant was given only seven days to prepare his defense, between when the government first informed him of the charges against him on April 25, 2015 and his trial on May 1, 2015. Because the Applicant did not have adequate time to conduct pre-trial discovery and prepare his case, the Uzbekistan government violated his rights under Article 14(3)(b) of the ICCPR and Principles 11(1), 18(2) of the Body of Principles and Rule 41(2) of the Nelson Mandela Rules.

vii. Uzbekistan Violated the Applicant’s Right to Examine Witnesses Against Him During Trial and Obtain the Attendance and Examination of Witnesses on His Behalf

91. Article 14(3)(e) of the ICCPR provides that “[i]n the determination of criminal charges against [a defendant] everyone shall be entitled … (e) [t]o examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”\textsuperscript{194} The Committee has confirmed that this guarantee is a crucial application of the principle of equality of arms and important for ensuring an effective defense.\textsuperscript{195}

92. At trial, the Applicant was denied the opportunity to cross-examine the prosecution’s witnesses who testified against him, including the testimony of a prison guard who did not even attend the hearing, but whose witness statement the court entered as evidence. The Applicant was only permitted to recite a short statement in his defense, in which he

\textsuperscript{191} ICCPR, \textit{supra} note 121, at art. 14(3)(b).
\textsuperscript{192} Body of Principles, \textit{supra} note 121, at Principle 18(2) and 11(1); Nelson Mandela Rules, \textit{supra} note 147, at rule 41(2).
\textsuperscript{193} General Comment No. 32, \textit{supra} note 167, at ¶ 32.
\textsuperscript{194} ICCPR, \textit{supra} note 121, at art. 14(3)(e).
\textsuperscript{195} General Comment No. 32, \textit{supra} note 167, at ¶ 39.
urged the judge to examine the video footage captured by the prison’s cameras, which would show that the alleged incidents constituting the charges against him had never occurred. However, the judge declined to examine this evidence in violation of the Applicant’s right to obtain the examination of witnesses on his behalf. In light of the court’s refusal to allow the Applicant to examine the witnesses against him or to obtain the examination of his own witnesses, the Uzbekistan government violated the Applicant’s rights under Article 14(3)(e) of the ICCPR.

viii. Uzbekistan Violated the Applicant’s Right to a Reasoned Appeal

93. Article 14(5) of the ICCPR guarantees that “everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”196 The fair trial requirements of Article 14 of the ICCPR require courts to provide reasoned analyses for their judgments. The right to have one’s conviction reviewed by a higher court imposes on the State a duty to review the case substantively, both on the basis of sufficiency of the evidence and of the law.197 Furthermore, the right to have one’s conviction reviewed entitles the convicted person to a duly reasoned, written judgment of the trial court and the court of first appeal.198

94. Pursuant to Uzbek domestic law, “[a] sentence of conviction may not rest upon suppositions and shall be entered only provided that the guilt of the defendant in committing the crime has been proved in court hearing.”199 The law further requires that “[c]redible evidence, which has been obtained in result of review of all circumstances of commission of a crime on the case, filling in of all deficiencies revealed in case file materials, and resolving of all doubts and contradictions, must underlie the sentence of conviction.”200 It also provides that a sentence “shall quote the evidence upon which the conclusions of the court regarding each defendant rest, and the reasons for which other evidence was turned down by the court.”201

95. Here, the appeals courts failed to provide duly reasoned judgments and address the substance of the Applicant’s appeals. The cassation court denied the Applicant’s appeal without explanation, and the Superior Court of Karakalpakstan upheld this denial without explanation on March 1, 2017. Because it has failed to provide the Applicant with reasoned judgments, the Uzbekistan government has violated the Applicant’s right to a reasoned appeal under Article 14(5) of the ICCPR.

ix. Uzbekistan Violated the Applicant’s Right to Freedom from Being Found Guilty of Any Criminal Offence Which Did Not Constitute a Criminal Offense at the Time Committed

196 ICCPR, supra note 121, at art. 14(5).
197 General Comment No. 32, supra note 167, at ¶ 48.
198 Id., at ¶ 49.
199 Article 463 of the Uzbek Criminal Procedure Code.
200 Id.
201 Article 467 of the Uzbek Criminal Procedure Code.
96. Article 15(1) of the ICCPR and Article 11(2) of the UDHR provide that “[n]o one shall be held guilty of any criminal offence on account of any act or omission which does not constitute a criminal offence, under national or international law, at the time when it was committed.”\textsuperscript{202} Principle 30(1) of the Body of Principles further specifies, “[t]he types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.”\textsuperscript{203} This right is reiterated generally in Rule 39(1) of the Nelson Mandela Rules.\textsuperscript{204} Rule 39(2) of the Nelson Mandela Rules further provides that “[p]rison administrations shall ensure proportionality between a disciplinary sanction and the offence for which it was established . . . .”\textsuperscript{205}

97. The Uzbekistan government has failed to specify that the alleged acts for which the Applicant was convicted constituted an infraction of prison regulations or a crime. Article 221 of the Criminal Code does not define which acts constitute “violations of prison rules.” Rather, the Criminal Code relies on vague and broad language, defining the crime as, “disobedience to legitimate orders of the administration … or other counteraction to the administration in performing its functions.”\textsuperscript{206} Without defining what constitutes “disobedience to legitimate orders … or other counteraction” there was no way for the Applicant to know that failing to wear a badge and disagreeing with or insulting other prisoners were crimes for which he could be sentenced to a further five years in prison. In fact, the only place these crimes appear in writing are in the charges against the Applicant.

98. Additionally, the Applicant’s sentence of five further years in prison is not proportional to his alleged crimes of failing to wear a badge and engaging in non-violent disagreements with other inmates. Extending the Applicant’s sentence by five years, mere weeks before his nine-year sentence was set to end, is far too egregious a punishment for the minor “crimes” the Applicant is convicted of.

99. In convicting the Applicant of violating prison rules that are so opaque that it was impossible him to know what action might constitute crime, and in rendering a harsh sentence disproportional to his alleged crimes, the Uzbekistan government has violated the Applicant’s right to freedom from being found guilty of an act that did not constitute a criminal offense under Article 15(1) of the ICCPR, Article 11(2) of the UDHR, Principle 30(1) of the Body of Principles, and Rules 39(1) and (2) of the Nelson Mandela Rules.

\textbf{C. Conclusion}

\textsuperscript{202} ICCPR, \textit{supra} note 121, at art. 15(1); UDHR, \textit{supra} note 121, at art. 11(2).
\textsuperscript{203} Body of Principles, \textit{supra} note 121, at Principle 30(1).
\textsuperscript{204} Nelson Mandela Rules, \textit{supra} note 147, at rule 39(1)
\textsuperscript{205} Id., at rule 39(2).
\textsuperscript{206} Article 221 of the Criminal Code of Uzbekistan.
As established above, in detaining and prosecuting the Applicant, the government failed to meet certain minimum international standards for due process. Moreover, the Applicant was targeted because of his exercise of his freedom of expression. As such, the Applicant’s detention is arbitrary pursuant to Categories II and III.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

On May 1, 2015, the Applicant was convicted on and sentenced to five years and twenty-six further days in prison before the Kunigrat criminal court of the Kungradsky district of the Republic of Karakalpakstan for “disobeyed in the legal demands of the administration of a correctional facility” under Article 221 of the Criminal Code.

The Applicant appealed his conviction to the Superior Court of Karakalpakstan on January 25, 2017. On March 1, 2017, the court of appeals upheld the Applicant’s conviction. On March 1, 2017, the Applicant filed an appeal to the Supreme Court of Uzbekistan, and is currently awaiting its decision.


Freedom Now is a non-profit, non-governmental organization that works to free individual prisoners of conscience through focused legal, political and public relations advocacy efforts.

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ANNEX A

Sentencing judgment of criminal court of Kungirat region of Karakalpak Republic (May 1, 2015)
31

2015-йил 1-май

Кўпирот тумани

Қоракалпакистон Республикаси жинойн ишлари бўйича Қўпирот тумани суди, кўйидаги суд таркибida:
раислик килипти - ушбу суддиннинг сўзъаси Д.Разов,
Б.Такурерсовнинг котилилида,
даклат айбойчиси - Қўпирот максус проқурори М.Давлетьяев,
судланувчи - А.Формоновнинг иштирокида.

Қўпирот тумани ИИБ биносида, очик суд маълисида дастлабки тержов органи томонидан Ўзбекистон Республикаси Жинойт кодекси 221-моддаси 2-
кисми бо'либ билиш қўлланган А.Формонова нисбатан тўпланган 156673-
сонли жинойи ишни кўриб чиқди.

Формонов Асмоқим Турғуновч - 1978 йил 13 декабрь кунин Фарғона вилояти Бешарқи туманида туғилган, Ўзбекистон Республикаси фуқаро, қилмати ўзбек, маълумоти ўрта, ҳўйлал (2 новр айронни бор), камолгунчага "Инсон хусусийларининг химоя қилиш" норасий ташқилотларининг Сирдарё вилояти бўйича ранси ҳавозимда ишлаган, Гулшон шахри, У.Юсупов МФБ, 3-мавзе 16-уй 2-хонодада истиклот киғил, муқаддам ЖИБ Янгир шахар суддиннинг 15.06.2006-
йилги хукмий бўйича ЎзР ЖКнинг 165-моддаси 2-кисми "в" банди
билиш айбой деб томиллиб, 9 (тўққиз) йил қулдатга озодликдан махрум қилсинг ҳавозимда сўзланиш, жинон умумий тартибдо колония ўтган билдирилган, 64/71-сонли жинон икро этиш колониясдан 03.04.2015-
йил 9-сонли терог ёздорига этан қилнган, айбой хулосаси нусхаасин олган.

Суд, суд маълисида сўзланишининг, ғулоҳларининг кўрсатмалари, даклат айбойчисининг қилинсин, сўзланишининг химоя ва охирти
сўзларининг тилишдан, кўйидагиларини аниқланади:

Сўзланиш А.Формонов УЯ-64/71-маслуслётларидан жазони икро этиш маълумасида жазо муддатини ўтаб юриб, 2015 йил 24 январ кунни соат
10:00да жазо муссааса кун тартибига асосан туркм максумлар хаммошда чўмлаётган вақтида 11-бриттада жазо муддатини ўтаб тўлқин махмум
Холматовга "нарни тур баколок, ҳимоний кетиш, одамга ўшла
сўзининг биласанлиги ҳўй" деб максумлар орада учун каматаш, ҳар хил
сўзларни айтди, устидан кунлиб, ўзини қолбий томонлама кўрсатиб
билишдан ички тартиблоналарини бузганлар учун муссааса бошқарувнинг
24.01.2015 йилги 45-сонли карорига асосан "5 суткага итинозий бўйинма"га
киритилган.
Бундан ташкыр, А.Формонов 2015 йыл 17 феврал күнү соат 10:00-да күн тартыпбага асосан турк кызыктуу маалыматтарынын сафтарга чыгарылганяти тактида ўзун билан бирга жазо муддаттини ўтпетган маалым X.Шукурполов маалыматларын арнабада буйича сафта тузулетган тактида, маалым А.Формоновга "сафта тўрти тур" деб айтганда, маалым X.Шукурполовга "сенинг мен билан ишвининг бўласини югардак, ит, мен ўзинга жавоб бераман" деб унга маалымлар олимда хар-кил кўпро гапларни айтб, болгиланган ички тартиб қоидаларин бузгангани учун муассаса бошларининг 17.02.2015 йилги 93-сонли карорига асосан "10 суктака интезизий бўлинма"га киритилган.

Бундан ташкыр, маалым А.Формонов 2015 йил 9 март күнү соат 15:40-да күн тартыпбага асосан турк кызыктуу маалыматлар телекуранат ташмача килиб ўтгирган тактида, турк кымдо кенгашин азосин маалым М.Шарипбоеев турк кызыктуу маалымларига тўрти ўтмаб томош килавиз деганда, маалым А.Формонов кеч кийин сабабсиз бу гапга жахон чиқиш "тўрти ўттирибмиз, ким ёрқисинго қарб телевизор томош килавиз" деб ҳамманинг олидига "ўзингни якили кўрсатма, сен ҳам менга ўхшаган маалымсиз, ўзинг гар тутак бўласен яна менга танбёҳ беринг қелдими" деб ўз-ўзидан жазабгав туннаб, хар-кил ҳакоратли гапларни айтб, бош кийимини маалым М.Шарипбоеевга отиб юборб, жаноқча чиқармокчи бўлган ҳаракатларни билани муассаса бошларининг 09.03.2015 йилги 149-сонли карорига асосан "20 суктака "Қарор"га киритилган.

Бундан ташкыр, маалым А.Формонов 2015 йил 30 март күнү соат 11:00-да муассаса ички күн тартыпбага асосан турк кызыктуу маалыматларини сафтарга олиб чыкаётган тактида, 11-бингада жазо муддаттини ўтпетган маалым А.Формоновда маалымлар учун билинган намина буйича кўрекка ва синий танлидалик фарқланиб билинганнинг йўқлик, тартиб бўлини ҳодим О.Этамов томонидан анъанланиб, муассаса бошларининг 30.03.2015 йилги 175-сонли карорига асосан "Ҳайфсав" эълон килиш ҳаракатсиздан интезизий жазога тортилган.

Шундай килиб, сўздаунччи А.Формонов муассасада ўрнатилган ички күн тартыпбага рион қилимасдан жазони ўтш тартыпбагий корукланиб равишда бузгангани учун "қарор"га ўтказиш таркасиздан интезизий жазо чораси қўланилиндан кейин бир йил ўтмасдан, жазони икрон этиш муассасасининг кунуний талабларига бўлсинмай, жазони ўтш тартиби талабларини бўлиб келган ҳаракатлар билан ЎзР ЖКнинг 221-моддаси 2-кисми "6" биланда кўрсатилган жиноятни содир қилган.

Суд мажлисда сўздаунччи А.Формонов ўзни уйлган айбга икрон эмаслигин билдириб, жазони ўтш даврда тартиб бузарликлар кўллашган учун "қарор"га ва интезизий бўлимага киритиш таркасиздан интезизий жазошларга тортилганлигин, айблон хўлсасда кўрсатилганликнинг ҳаммасини буйича оламаслигин байён қилиб кўрсатмачи қилди.

Суд мажлисда А.Формоновнинг ЎзР ЖКнинг 221-моддаси 2-кисми "6" биланда кўрсатилган жиноятни содир қилганликдаги айбни қўйишибни билани давлатларининг яъни зиёд бўлувчидир.

Яъни, Суд мажлисда гувоҳ Давлетов Пархат Сапарбаевич ўз кўрсатмасида, УЛ-64/71-сонли жазони икрон этиш колоинида умумий
僻담 빌딩 내부와 정확한 시간대에 미리 테이블을 예약하는 것이 좋습니다.
хакоратты қайыраңы айтып, бош қийңілдің мақұм М.Шәріпбөсева отыр қурастырған, шығармалы қыздардың білдін қарағандары білді мауәсеса бошқарының қароны асосан "20 сәулет "Қазақстан" қиындығы менен," мақұм А.Формонов мауәсесінде ұрнақтатып ішкі қуан тартынды сүрұққал рәсіні сыйкындық рұйықтарға түріңі менен тұрғыдамандықты болып берген күріштік мақұм;

Суд мәжілісі қуоқсың Қысқаретті оқып, Үл-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көрсетеді. Ул-64/71-сөйлі жазын құрастыру қарында қызмет көр?
Суд, суданчунин А.Формононовнининг айбино тақдиқчилиги ўшбу даволар
сул мажнисида ўз ибодотни тонгилнинг сабаблари үзларни маъбут ва ярқоси
dаволар деб топилган ҳамда дастлабки теров органи толонидан
суданчунинг жиҳотий харқатлари ЎзР ЖКкнинг 221-моддаси 2-кисми «б»
банди бино тўғри кўрсатишни қилганган деб ҳисобланади.

Сабабги, суданчунин А.Формононовнинг УЯ-64/71-сонларини,
маҳсуслаштирилган-қолдивида жазо муддатининг ўтаб юриб жазоли, жаро қил
муассасаси маълумотнинг қонуний тақдирларига буййусмаканинг ва
муассасалар қўшқилнган ички қун тартибнинг қилмаканинг учун
жаро қилнган ва тарқолиш тарқолиш кимди камолидан қўшқилнган жазоли,
банди бино қўшқилнган жиҳотий касалдан содир қилган.

Шунинг учун, юкорида асос ёки суғдунчунин А.Формононовнинг
ЎзР ЖКкнинг 221-моддаси 2-кисми «б» бандида натида тутилган жиноятиги
содир қўшқилнган айбдор деб топиб, унга жазол тайинлананинг ва илгарни ҳам
касалдан оғир жиноятиги содир этиб судангандан тегишир хулоқа
чарқармасдан касалдан ина жиноят содир қўшқиланган қуннинг жазолиниги
олар қўшқилнган қолот жазоли ҳолим топади.

Суд, А.Формононов қазои тайинланган айоб боийда йиғилар бўйича
Ўқил ўқиш учун 15.06.2006-йилги ҳукм боийдо ЎзР ЖКкнинг 165-моддаси 2-
кисми "в" бандида кўрсатилган жиноятиги содир этиқчиларда айбби деб
тониб, 9 (ўқил) йил муқаддат озодланикдан маҳрум қилини жазолининг
ўтмасин 26 (йиғил қалб) кун, жазол муддати ўшбу ҳукм бўйича
тайинланган жазолга ЎзР ЖКкнинг 60-моддаси тартибда туълик қўшқил
узилкесида жазол тайинлангани ва жазоли қаттиқ тартибни колонияда ўтасини
байлашланинг қўшим топиб.

Юкорида асос ва Ўқилланиш Республикаси Жиҳот-процессида

ҳукм килди:

Суданчунин Формоно авазлан ўқиллиғи ЎзР ЖКкнинг 221-моддаси
2-кисми «б» бандида натида тутилган жиноятиги содир қўшқилнган айбдор
деб топилган ва унга ўшбу модда билан 5 (биш) йил муқаддат озодланикдан
маҳрум қилини жазоли тайинланнинги.

Тайинланган жазолга жинояти боийда йиғил Ўқил ўқиш ўқишнинг
15.06.2006-йилги ҳукм боийдо ЎзР ЖКкнинг 165-моддаси 2-кисми "в"
бандида кўрсатилган жиноятиги содир этиқчиларда айбби деб тониб, 9
(ўқил) йил муқаддат озодланикдан маҳрум қилини жазолининг
ўтмасин 26 (йиғил қалб) кун, жазол муддати ўшбу Ҳукм боийда
ЎзР ЖКкнинг 60-моддаси тартибда туълик қўшқил узилкесида жазол тайинланган ва жазоли қаттиқ тартибни колонияда ўтасини
байлашланинг қўшим топиб.

Жазоли қаттиқ (строгий) тартибни колонияда ўтаси. Жазоли утас
муқаддати 2015-йил 3-апрель куниндан ҳисоблансан.
Судланувчи А.Формоновнинг эксиёт чораси ўтаришсин камокда колдирилсиз.

Хукмдан юроқ томон ҳукм эълон қилинган қундан бошлаб 10 сутка муддат ичидан, судланувчи ҳа ҳукм нусхасини олган кундан бошлаб иш муддат ичida Қоралайхокистон Республикаси жиноят иншолари бўйича Олий судиға апелляция тартибида, ушбу муддат ўтганидан сўнг қассацион тартибида жиноят келтиришни, прокурор protest билдиришга ҳақиқ.

Равелик кисири

Д.Разов

Аслига тўриат

Д.Разов
ANNEX B

Formonov Appeal submitted to the Supreme Court of Uzbekistan, dated March 27, 2017
Жиноят ишлари бўйича Узбекистон Республикаси Олий судиға
Ўз. Рес.ЖКнинг 221-моддаси 2-кисми “б” банди билан айбдор деб топилган Фармонов Азамжон Тургуновичнинг химоясига “MUQIM HIMOYA” адвокатлик фирмаси адвокати М.Парпиевдан

Ш И К О Й Т
(назорат тартибида)

Жиноят ишлари бўйича Қўнгирот тумани судининг 2015 йил 01 майдаги ҳукми билан Фармонов Азамжон Тургунович Ўзбекистон Республикаси ЖКнинг 221-моддаси 2-кисми “б” банди билан айбдор деб топилган ва унга ушбу модда билан 5(беш) йил муддатга озодликдан махрум қилиш жазоси тайинланган.

Тайинланган жазога жиноят ишлари бўйича Янгиер шахар судининг 15.06.2006 йилги хукми билан қўнгирот тумани судининг 2015 йил 01 майдаги ҳукми билан айбдор деб топилган 9(тўққиз) йил муддатга озодликдан махрум қилиш жазосининг утамламаган 26 (йигирма олти) кун жазо муддатга ЎзР ЖКнинг 165-моддаси "в"бандида кўрсаткилган жиноятни содир этганлиқда айбли деб топилиб, 5(беш) йил муддатга озодликдан махрум қилиш жазосининг 26(йигирма олти) кун жазо муддатга озодликдан махрум қилиш жазоси тайинланган 2017 йил 1 март кунин жиноят ишлари бўйича Коракалпогистон Республикаси Олий суди кассация судланиба, жиноят ишлари бўйича Қўнгирот туман судининг 2015 йил 1 май кунги хукми устидан кассация тартибидан езилган шикоятни каноатлантирилмасдан ҳукмни узгаришсиз кольдирган.

Судлов хайътининг ажрими билан узгаришчиларга асосан келишиб булмагандир.

Жумладан, кассация тартибидан узгаришчиларга асосан келишиб булмагандир.

Биринчи инстанция суди суд процесси даврида менинг химоямдаги А.Фармоновни адвокат билан таъминлаш ҳакидаги илтимосларини эътиборга олмай, адвокат билан таъминламаган, ваҳоланки Узб.Рес.ЖКнинг 51-моддасида курсатилган "судлов олиб борилган вактда давлат айбдорларини узгариш қилиб, оклов ҳукмнинг чиқарилиши қўшилгандир" деб курсатилган булса биринчи инстанция суди ушбу моддаларни купол
равишда бузган, суд А. Фармоновни хукукий химоясиз колдирган, лекин кассация судов хайти хам бу холатни эътиборсиз колдирган.

Махкум Фармонов Азамжон Тургуновичга нисбатан  биринчи инстанция суди томонидан жуда оғир жазо тайинланган деб хисоблайди.

Жумладан: Хукмда кўрсатилишича химоям остидаги А.Т.Фармонов УЯ 64/71 махсуслаштирилган жазони ижро этиш муассасасида жазо муддатини ўтаб юриб 24.01.2015 йилда соат 10:00 ларда муассаса қун тартибига асосан туркум махкумлари хаммомга чўмилаётган вактда 10-бригадада жазо муддатини ўтаётган махкум X.Шукров махкумлари бригадада бўйича сафга тузакётган вактда махкум А.Т.Фармоновга сафга тўғри тур деганида у махкум X.Шукровга “сенинг мен билан ишинг бўлмасин югурдак ит, мен ўзимга жавоб бераман” деб белгиланган ички тартиб коидаларини бузганлиги учун муассаса бошлингнинг 24.01.2015 йилдаги 45-сонли қарорига асосан 20 суткага интизомий бўлинмага киритилган. Шунингдек, 17.02.2015 йилда соат 10:00ларда кун тартибига асосан туркум махкумларининг сайрга чикаётган вактда ўзи билан бирга жазо муддатини ўтаётган махкум X.Шукров махкумлари бригадада бўйича сафга тузакётган вактда махкум А.Т.Фармоновга сафга тўғри тур деганида у махкум X.Шукровга “сенинг мен билан ишинг бўлмасин югурдак ит, мен ўзимга жавоб бераман” деб белгиланган ички тартиб коидаларини бузганлиги учун муассаса бошлингнинг 17.02.2015 йилда соат 15:40ларда кун тартибига асосан туркум махкумлари телекўрсатув томоша қилиб ўтирган вактида туркум жамоа кенгаши аъзоси махкум М.Шарипбоев туркум махкумлари “тўғри ўтириб томоша қиламиз” деганига махкум А.Т.Фармонов хеч қандай сабабсиз бу гапга жаҳл қилиб “тўғри ўтирибмиз, ким орқасига қараб телевизор томоша қилади” деб хаммани олдида “ўзингни аккили кўрсатма, сен хам менга ўхшаган махкумсан, ўзингға сўтақ бўлсанг, тагин менга танбе бердим” деб ўзингни ҳаракатлари билан муассаса тартибини бузганлиги учун муассаса бошлингнинг 09.03.2015 йилли 149-сонли қарорига асосан 10 суткага карцерга киритилган. Шу билан биргақида, махкум А.Т.Фармонов 30.03.2015 йилда соат 11:00ларда муассаса ички кун тартибига асосан туркум махкумларини сайрга олиб чикаётган вактда 11-бригадада жазо муддатини ўтаётган махкум А.Т.Фармонов махкумлар учун белгиланган намуна бўйича қўракга ва енгига такилидиган фарқлаш белгилиарининг йўқлиги, тартибот бўлми ходими О.Эгамов томонидан аникланиб, муассаса бошлингнинг 30.03.2015 йилли 175-сонли қарорига асосан “Ҳайфсан” эълон қилиш тарикасида интизомий жазога тортилган.

2015 йил 18 апрель куни Жазони ижро этиш қалонларда конунларга риоя этилиши устидан назорат бўйича Кунгирот прокуратурасининг
терговчиси Е.Каниязов томонидан А.Фармоновни айбланувчи тарикасида сурок килиш баенномасида А.Фармонов бу айбга норозилигини ва тергов харакатлари хукукни мухофаза килиш органлари ходимлари томонидан таъзил остида сурок килинганлигини хамда бу холатлар уюштирилганлигини табдиидаган булсала, 2015йил 22 апрел кунин айблов хулосаси тасдиклаган жазони ижрро этти колонияларида конунларга риоя этилиши устинан назорат буйича Кунгирот прокурори М.А.Давлеткычев хам купол равишда конун бузулишини кура била туриб бу холатта куз юмган. Прокуратура терговчиси Е.Каниязов эса УЗБ.РЕС.ЖПК нинг 22-23-модаларида;

Ҳақиқатни аниқлаш Суриштирувчи, терговчи, прокурор ва суд жиноят юз берганлигини, унинг содир этилишида ким айбдорлигини, шунингдек у билан боғлик барча холатларни аниқлаши шарт.

Иш бўйича ҳақиқатни аниқлаш учун факат ушбу Кодексда назарда тутилган тартибда топилган, текширилган ва бахоланган маълумотлардан фойдаланиш мумкун. Гумон қилинувчисидан, айбланувчиндан, судланувчиндан, жабрланувчиндан, гугохдан ва ишда иштирок этувчи бошқа шахслардан зўрлаш, қўрқитиш, хукуқларини чеклаш ва ёқунга хилоф бўлган ўзгача чоралар билан кўрсатувлар олишга ҳаракат қилиш ман этилади.

Иш бўйича исботланши лозим бўлган барча холатлар синчковлик билан, ҳар томонлама, тўла ва холисона текшириб чиқилиши керак. Ишда юзага келадиган ҳар қандай масалани ҳал қилишда айбланувчini ёки судланувчini ҳам фош қиладиган, ҳам оқлайдиган, шунингдек унинг жавобгарлигини ҳам енгиллаштирадиган, ҳам оғирлаштирадиган холатлар аниқланиши ва хисобга олиниси лозим.

23-модда. Айбсизлик презумпцияси

Гумон қилинувчи, айбланувчи ёки судланувчи унинг жиноят содир этилиша айбдорлиги қонунда назарда тутилган тартибда исботлангунга ва қонуний кучта кирган суд хукми билан аниқланганга қадар айбсиз хисобланади. Гумон қилинувчи, айбланувчи ёки судланувчи ўзининг айбсизлигини исботлаб бериши шарт эмас.

Айбдорликка оид барча шубҳалар, башарти уларни бартараф этиш имкониятлари тутган бўлса, гумон қилинувчи, айбланувчи ёки судланувчининг фойдасига ҳал қилиниши лозим. Қонун қўлланилаётганда келиб чиққан бўлса, гумон қилинувчининг, айбланувчининг ёки судланувчининг фойдасига ҳал қилиниши керак,- деган қонун талаблари борлигини унутган.
Биринчи инстанция суди хам шу холатга аниклик қиритмасдан ишни бир тарафлама кўриб шошма-шошарлик билан асослантирилмаган хукм чиқарган.

УЗБ.РЕС. Олий суди пленумининг 1997 йил 2 майдаги 2-сонли карори, Олий суд Пленумининг 2002 йил 14 июндаги 10-сонли, 2003 йил 19 декабрдаги 20-сонлива 2006 йил 3 февралдаги 5-сонли карорларида асосан УЗБ.РЕС. Олий суди Пленуми карорида;

Судлар хукм чиқаришда суднинг хукми қонуний ва адолатли бўлиши, факат конунга бўйсунувчи, мустанов судьялар томонидан чиқарилиши; судьялар маслахатлашувининг сир тутилиши; одил судловни фуқароларниң конун ва одилда тенглиги асосида, шахсиятни шаъни ва қадр-қимматни хурмат қилиган ҳолда, таразларнинг ўзаро толқин олиш, далилларни бевосита ва озаки усулда текширилиши асосида чиқар илиши ва иш бўйича ҳақиқий холатни аниклаш тўғрисидаги жиноят процессининг мухим тамойилларига амал қилиши мажбурдирлар. Ушбу тамойилларни бузишлик хукмни қонун эмас деб топишга асос бўлади.

Судларнинг эътибори ЖПК 22-моддаси биноан иш бўйича ҳақиқийн и аниклаш учун факат конунда назарда тутилган тартибда тўпланган, текшириланган ва баҳоланган маълумотлардан қийинлиги қарата йилс. Бунда ЖПК 26 ва 455-моддалари талаби биноан хукм факат суд мажлисида текшириланган ва суд мажлиси баённомасида ўз аксини топган далилларга асослантирилган бўлиши мумкин.

Судланувчи томонидан терговда ёки судда айбдир бўйича ҳақиқатни аниклаш учун факат конунда назарда тутилган тартибда тўпланган, текшириланган ва баҳоланган маълумотлардан қийинлиги қарата йилс. Бу талаб айбларни текширилган ва биноан хукм факат суд мажлисида текшириланган ва суд мажлиси баённомасида ўз аксини топган далилларга асослантирилган бўлиши лозим.

. Судланувчи томонидан терговда ёки судда айбдир бўйича ҳақиқатни аниклаш учун факат конунда назарда тутилган тартибда тўпланган, текшириланган ва баҳоланган маълумотлардан қийинлиги қарата йилс. Бу талаб айбларни текширилган ва биноан хукм факат суд мажлисида текшириланган ва суд мажлиси баённомасида ўз аксини топган далилларга асослантирилган бўлиши лозим.

. Қонунга зид равишида олинган барча далиллар юридик кучга эга бўлмасдан хукмга асос қилиб олинши мумкин эмаслиги садларга тушунтирилсин. Қонунга зид равишида олинган далилларга тергов олиб боришнинг нокунини, рухий ва жисмоний куч ишлатиш усулларини қўллаб олинган далиллар, шунингдек жиноят-процессуал қонун бошқа нормаларининг бузилиши (масалан, ҳимоя хукуқининг бузилиши) натижасида олинган далиллар киради. Далил қонунга зид равишида олинган деб топилган такдирда, суд ишларида далиллар йингидисдан уни чиқариш тўғрисидаги ўзининг карорини, қонуннинг бузилиши нимадан иборат эканлигини кўрсатган ҳолда, асослантириши лозим.
Далилни конунга зид равишида олинган деб бахолашда суд далилнинг ҳакконийлиги ва ҳолислиги тўғрисидаги ёки кўйилган айболида судланувчи далилдорлиги тўғрисидаги шубҳани бартараф қилишнинг ҳақидаги суднинг фойдасиз бўмаса, судланувчивчи лозимлигидан келиб чиқиш керак.

Ишда тўпланган далилларнинг етарли эмаслиги, далиллар конунга зид равишида олинганлиги сабабли улар далил сифатида танилмaganлиги ёки қўйилган айболида судланувчивчи далилдорлиги тўғрисида шубҳани бартараф қилишининг имкони йўқлиги ҳақидаги далилдорлиги тўғрисида шубҳанга унни бартараф қилишнинг имкони йўқлиги ҳақидаги судланувчи асослантирилган хулосаси оклов этикининг чиқариш учун асос бўлади.

Судлар хоҳ айбол, хоҳ оклов ҳукмлари чикараётганларида жиноий кодининг ҳуқуқийлари, шахсий қилмисида жиноят таркиби, таркибинги борлиги, уларга шубҳан бариштирганларида далилдорлиги ҳақидаги суднинг асослантирилган хулосаси ҳолат қилинганлиги ҳақидаги суднинг асослантирилган хулосаси оқлов ҳукми чиқариш учун асос бўлади.

Судлар хоҳ айбол, хоҳ оклов ҳукмлари чикараётганларида далилдорлиги, ҳолат қилишининг имкони йўқлиги ҳақидаги далилдорлиги ҳақидаги суд ҳуқуқий ҳолат қилиниши ҳақидаги далилдорлиги ҳақидаги суд ҳуқуқий ҳолат қилиниши ҳақидаги далилдорлиги ҳақидаги суд нисбатан жазо турини ва миқдорини белгилашда жавобгарлигини оғирлаштириш учун келтирган вожларига бахо бериш учун айбдорлиги тўғрисида биринчи инстанция суди хукмнинг тавсиф кисмининг муҳим белгиси ҳисоблашади. Бунда айболдорлиги таркиблиги нима ҳимоя қилиш учун келтирган важлиги баҳо берилиши керак. Судланувчи томонидан ўзининг ҳимоя қилиш учун келтирган важлиги баҳо берилиши керак. Судланувчи томонидан ўзининг қўйилган айболдорида далилдорлиги ҳақидаги суд ҳуқуқий ҳолат қилиниши ҳақидаги далилдорлиги ҳақидаги суд ҳуқуқий ҳолат қилиниши ҳақидаги далилдорлиги ҳақидаги суд нисбатан жазо турини ва миқдорини белгилашда жавобгарлигини оғирлаштириш учун келтирган вожларига бахо берилиши керак. Судланувчи томонидан ўзининг қўйилган айболдорида далилдорлиги ҳақидаги суд ҳуқуқий ҳолат қилиниши ҳақидаги далилдорлиги ҳақидаги суд ҳуқуқий ҳолат қилиниши ҳақидаги далилдорлиги ҳақидаги суд нисбатан жазо турини ва миқдорини белгилашда жавобгарлигини оғирлаштириш учун келтирган вожларига бахо берилиши керак.

Судланувчивчи қўрсатма берилади бош тартипида ҳуқуқий ҳолат қилиниши ҳақидаги далилдорлиги ҳақидаги суд ҳуқуқий ҳолат қилиниши ҳақидаги далилдорлиги ҳақидаги суд ҳуқуқий ҳолат қилиниши ҳақидаги далилдорлиги ҳақидаги суд нисбатан жазо турини ва миқдорини белгилашда жавобгарлигини оғирлаштириш учун келтирган важлиги баҳо берилиши керак. Судланувчиси томонидан ўзининг қўйилган айболдорида далилдорлиги ҳақидаги суд ҳуқуқий ҳолат қилиниши ҳақидаги далилдорлиги ҳақидаги суд ҳуқуқий ҳолат қилиниши ҳақидаги далилдорлиги ҳақидаги суд нисбатан жазо турини ва миқдорини белгилашда жавобгарлигини оғирлаштириш учун келтирган важлиги баҳо берилиши керак.

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Судланувчивчи қўрсатма берилади бош тартипида ҳуқуқий ҳолат қилиниши ҳақидаги далилдорлиги ҳақидаги суд нисбатан жазо турини ва миқдорини белгилашда жавобгарлигини оғирлаштириш учун келтирган важлиги баҳо берилиши керак. Судланувчивчи қўрсатма берилади бош тартипида ҳуқуқий ҳолат қилиниши ҳақидаги далилдорлиги ҳақидаги суд нисбатан жазо турини ва миқдорини белгилашда жавобгарлигини оғирлаштириш учун келтирган важлиги баҳо берилиши керак.
моддаларига кўра, "Жазо ва бошка хукукий таъсир чоралари жисмоний а zob бериш ёки инсон қадр -қимматини камситиш мақсадини кўзламайди.

Жиноят содир этган шахсга нисбатан у азлоқан тузалиши ва янги жиноят содир этишининг олдини олиш учун зарур хамда етарли бўладиган жазо тайинланши ёки бошқа хукукий таъсир чораси кўлланилиши керак.

Жиноят содир этишда айбдор бўлган шахсга нисбатан қўлланилладиган жазо ёки бошқа хукукий таъсир чораси одилон бўлиши, яъни жиноятнинг огир енгиллиги, айбнинг ва шахснинг ижтимой хавфлилик деҳцасига мувофик бўлиши керак, аммо биринчи инстанция суди Узб.Рес. Жиноят Кодексида одиллик ва инсонпарварлик принциплари хакида моддалар борлгаган унутган.

Булардан ташқари биринчи инстанция суди айбловда келтирилган фактларни тўлик урганиб чиқмаган. Буну кўидаги холатларда кўрш мумкин. ЖИЭМ томонидан маҳкум А.Т.Фармоновга нисбатан биринчи марта 24.01.2015 йилда интезомий жазо кўлланилган, ажабланарли томони шундаки 5 суткали жазо муддати тугагач орадан 17 кун вакт ўтар қўлланиладиган жазо ва бошқа хукукий таъсир чораси одилон бўлиши керак.

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Факатгина ўзига душман бўлган ёки ўзга касд килган инсон, озодликка чиқишига 5 ой муддат қолганида муассаса ички тартиб қоидалари бузиши мумкин.  "20"суткага" карцер"га киритилган. Бу холатлардан кўрниб турибдики бунинг хаммаси муассаса айбловда келтирилган. Энг кизиги, керошдан чиқкан куннининг эртасида, яна интезомий жазо жазони уташ давомида яъни 8 йилу 7 ой давомида тартиб коида бузмасдан охирги паллада тартиб коийдани бузиши мумкин.

Муассасанинг А.Т.Фармоновга нисбатан бундай холатларни уюштиришга сабаб, А.Т.Фармонов УЯ 64/71 ЖИЭМ даги камчиликлар ва оғир шароитлар туғрисидан юкори турувчи органларга бир неча бор езма равишда мурожаат килган, маккуллар бошқа ходимлар, ҳодимлар ва жазо муассасага киритилган. Бу холатлардан кўрниб турибдики, бу мумкин. Янгиер шахар судининг 15.06.2016 йилдаги хукми билан 9 йил муддатга озодликдан маҳрум килинган жазо жазони уташ давомида яъни 8 йилу 7 ой давомида тартиб коида бузмасдан охирги паллада тартиб коийдани бузиши мумкин.

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ЖИЭМ томонидан Ўзбекистон Республикаси ЖИКда белгиланган талаблар кўпол равишда бузилган, биринчи инстанция суди эса бу ҳолатга бармок орасидан қараб ноконуний ҳукм чиқарган.

Хозирда химоя юкорида келтирилган Пленум карорларини хамда, менинг химоямдagi А.Т.Фармоновни жазо муддатини ярмидан кўпини ўтаганлигини, унинг икки нафар вояга етмаган фарзандлари борлигини, оиланинг ягона бокувчиси бўлганлигини, эски жазони ўташ даврида 8 йил 7 ой давомида муассаса тартиб коидаларига катьй ғиоя килганлигини инобатга олиб судлов хайватидан Узб.Рес.ЖКнинг 221-моддаси2 кисми “б” банди билан айбланган Фармонов Азамжон Тургуновичга нисбатан жиноят ишлари бўйича Қўнгирот туман судининг 2015 йил 01 май кунги хукмни хамда Корақалпогистон Республикаси жиноят ишлари бўйича Олий суди кассация инстанциясининг 2017 йил 1март кунги ажримини бекор килиб, унга нисбатан оклов хукмини чиқариш тугрисида протест келтиришнингизи сурайман.

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