

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Mr. Sètonджи Roland Jean-Baptiste Adjovi (Benin)
Vice-Chairperson: Ms. Leigh Toomey (Australia)
Vice-Chairperson: Mr. José Guevara (Mexico)
Mr. Seong-Phil Hong (Republic of Korea)
Mr. Vladimir Tochilovsky (Ukraine)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

Aramais Avakyan
Citizen of the Republic of Uzbekistan

v.

Government of the Republic of Uzbekistan

URGENT ACTION REQUESTED

Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 6/4, 15/18, and 24/7¹

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February 14, 2017

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.

BASIS FOR “URGENT ACTION” REQUEST²

As established in the attached petition, the Government of the Republic of Uzbekistan (“Uzbekistan”) has arbitrarily deprived Aramais Avakyan (the “Applicant”) of his liberty.

There is reason to believe that the Applicant’s continued detention places his health and life at risk. The Applicant was held incommunicado at a detention center in Tashkent for 40 days during which time, the police tortured him in order to force him to sign a confession.³ The Applicant suffered severe injuries from this torture including five broken ribs on his right side and four broken ribs on his left side,⁴ as well as burn marks from the electric shocks he received.⁵ Considering the reputation of Uzbek prisons for torture and the Applicant’s own experience, there is significant concern that the Applicant remains at risk for continued abuse.

The Applicant’s health has deteriorated rapidly while in prison. He has lost dangerous amounts of weight and has been hospitalized twice since his conviction on February 19, 2016.⁶ After his conviction, the Applicant was forced to do hard manual labor carrying bricks despite his broken bones and other injuries caused by torture.⁷ By May 21, 2016 he was unable to walk and, after significant pressure from his family, the authorities transferred the Applicant to a hospital for treatment for spinal injuries.⁸ The prison authorities shortly thereafter declared him healed, and brought him back to prison (and forced labor), but by early August the Applicant was again unable to walk.⁹ He was hospitalized for the second time on August 21, 2016.¹⁰ [REDACTED].¹¹ [REDACTED].¹² Although the Applicant is not currently being forced into manual labor, given that the Applicant’s prior return to prison concluded with the Applicant’s hospitalization, there remains an acute danger that the prison authorities will once again disregard the Applicant’s serious health conditions and return him to work carrying bricks.

In addition to his deteriorating health, the Applicant is forced to endure poor prisons conditions. The Applicant is given salty drinking water, and as a result has constant diarrhea.¹³ Despite frigid weather, he only has access to cold water for washing.¹⁴

² Some of the information contained in this petition is based on private communications with individual sources. Their identities have been withheld due to concerns for their security or at their own request. Each source has been assigned a pseudonym consisting of two randomly assigned letters.

³ Amnesty International, *Fish Farmer Tortured, Jailed After Unfair Trial*, (April 1, 2016), available at <http://ua.amnesty.ch/urgent-actions/2016/02/040-16> [hereinafter “Fish Farmer Tortured”]; Communication with AB and BC, on file with author.

⁴ Communication with AB, on file with author.

⁵ *Id.*

⁶ *Id.*

⁷ Communication with AB and BC, *supra* note 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Communication with AB, *supra* note 4.

¹⁴ *Id.*

Given the danger of the continued risk of torture, the Applicant's serious health conditions and the poor prison conditions, the Applicant's continued detention places his life and health at risk. Accordingly, it is hereby requested that the UN Working Group on Arbitrary Detention ("Working Group") consider this petition pursuant to the "Urgent Action" procedure.¹⁵ In addition, it is requested that the attached Petition be considered a communication and formal request for an opinion of the Working Group pursuant to Resolution 1991/42, 1994/32, 1997/50 of the Commission on Human Rights as reconfirmed by Resolution 2000/36, 2003/31, and Human Rights Council Resolutions 6/4, 15/18 and 24/7.¹⁶

¹⁵ *Methods of Work of the Working Group on Arbitrary Detention*, UN Doc. A/HRC/33/66, ¶ 22-24, (July 12, 2016) [hereinafter "Revised Methods of Work"].

¹⁶ *Id.*, at ¶ 9-20.

QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION

I. IDENTITY

See Section IV. I.B.1.

II. ARREST

1. **Date of arrest:** September 4, 2015
2. **Place of arrest (as detailed as possible):** Dzhizakh, Uzbekistan
3. **Forces who carried out the arrest or are believed to have carried it out:** National Security Service
4. **Did they show a warrant or other decision by a public authority?** No
5. **Authority who issued the warrant or decision:** N/A
6. **Relevant legislation applied (if known):** Unknown

III. DETENTION

1. **Date of detention:** September 4, 2015

Duration of detention (if not known, probable duration): The Applicant has been in detention since September 4, 2015 to the date of this communication.

2. **Forces holding the detainee under custody:** Government of Uzbekistan
3. **Places of detention (indicate any transfer and present place of detention):** Detention center in Tashkent, later transferred to pre-trial detention center in Dzhizakh, and currently in Prison Colony 64/61 in Karshi, Uzbekistan
4. **Authorities that ordered the detention:** Dzhizakh Criminal Court
5. **Reasons for the detention imputed by the authorities:** Applicant was accused of setting up and leading a group that spread radical Islamic ideology in an attempt to overthrow Uzbekistan's constitutional order.¹⁷

However, the Applicant's prosecution was the direct result of his success as a small businessman. See "Statement of Facts," below.

¹⁷Anush Martirosian, *Armenian in Uzbekistan Accused of Islamic Extremism*, Radio Free Europe/Radio Liberty, (January 30, 2015), available at <http://www.azatutyun.mobi/a/27458206.html> [hereinafter "Armenian Accused"].

6. **Relevant legislation applied (if known):** Articles 159, 161, 169 and 244 of the Uzbek Criminal Code.¹⁸

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

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 cases of the Applicant, an Uzbek businessman wrongly detained on September 4, 2015 and sentenced by the government to seven years in prison on February 19, 2016.

A. Background on Uzbekistan

1. Political, Legal, and Social Background of Uzbekistan

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.¹⁹ President Karimov was elected to four terms as president despite a Constitutional prohibition on serving more than two consecutive terms.²⁰ The people of Uzbekistan do not have a meaningful opportunity to change the composition of the government through the electoral process.²¹ Only those political parties loyal to President Karimov were allowed to register and “compete” in elections, which effectively suppresses all political opposition.²² 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.²³

President Karimov died in August 2016, and was succeeded by the former Prime Minister, Shavkat Mirziyoyev, who won the presidential election in December 2016.²⁴

Uzbekistan has a population of approximately 29 million, with 88% identifying Muslim, 9% identifying Eastern Orthodox and 3% identifying as other.²⁵ The government exercises strict

¹⁸ Communication with AB and BC, *supra* note 3.

¹⁹ U.S. State Department, *Background Note: Uzbekistan*, (January 31, 2012), available at <http://www.state.gov/r/pa/ei/bgn/2924.htm>.

²⁰ Freedom House, *Freedom in the World 2016*, (2016), available at <https://freedomhouse.org/report/freedom-world/2016/uzbekistan> [hereinafter “Freedom in the World”].

²¹ Organization for Cooperation and Security in Europe, Republic of Uzbekistan Parliamentary Elections: December 26, 2004, Final Report, OSCE/ODIHR Limited Election Observation Mission (March 7, 2005), available at <http://www.osce.org/odihr/elections/uzbekistan/41950>.

²² *Id.*

²³ Freedom in the World, *supra* note 20.

²⁴ U.S. Central Intelligence Agency, *The World Factbook: Uzbekistan* (December 20, 2016), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/uz.html>.

²⁵ *Id.*

control over religious activity and requires that a religion be registered before it can be legally practiced.²⁶ A number of media outlets have reported harassment of people who belonged to minority religious groups that were deemed “non-traditional.”²⁷ Increasing numbers of Christians are being punished simply for possessing religious literature at home.²⁸ However, raids of private homes and confiscation of religious literature are directed against people of all faiths, including Muslims, Protestants and Jehovah’s Witnesses.²⁹ Punishment for possession of religious material includes fines, jail sentences and torture.³⁰

In recent months, Uzbekistan has increased the suppression of Islamic worship for fear of Islamic fundamentalism taking hold in the country.³¹ The Uzbek authorities have begun arresting and detaining alleged sympathizers or members of the Islamic State (“IS”) and other local groups deemed “extreme” in unprecedented numbers.³² While there is little evidence that IS has done much recruiting in Uzbekistan,³³ there is an emerging pattern of abuse in which officials accuse individuals—even non-Muslims—of working with or supporting extremist groups in order to pursue personal gains (i.e. sabotage business competitors) and to suppress independent voices in the country.³⁴ The Initiative Group of Independent Human Rights Defenders estimated that more than 12,000 persons are currently imprisoned on vague charges related to “extremism” or “anti-constitutional” activity.³⁵

2. Lack of Judicial Independence and Due Process Protections in Uzbekistan

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.³⁶ All judges are

²⁶ Freedom in the World, *supra* note 20; United States Commission on International Religious Freedom, 2016 Annual Report, 77, (2016) available at <http://www.uscirtf.gov/sites/default/files/USCIRF%202016%20Annual%20Report.pdf> [hereinafter “USCIRF 2016 Annual Report”].

²⁷ United States Department of State, *2014 Report on International Religious Freedom*, Bureau of Democracy, Human Rights and Labor, (October 14, 2015), available at <http://www.state.gov/j/drl/rls/irf/2014/sca/238512.htm>.

²⁸ Ruth Gledhill, *Christian Persecution on the Rise in Uzbekistan Where Just Owning A Bible is Illegal*, Christian Today, (October 5, 2016), available at <http://www.christiantoday.com/article/christian.persecution.on.the.rise.in.uzbekistan.where.just.owning.a.bible.is.illegal/97157.htm>.

²⁹ Mushfig Bayram, *Uzbekistan: Large fines for “illegal” religious literature*, Forum 18 News Service, (June 7, 2016), available at http://www.forum18.org/archive.php?article_id=2185.

³⁰ *Id.*

³¹ Mansur Mirovalev, *Thousands of Uzbek Muslims Jailed for ‘extremism’*, Aljazeera, January 7, 2016, available at <http://www.aljazeera.com/news/2016/01/thousands-uzbek-muslims-jailed-extremism-160107110149439.html> [hereinafter “Thousands Jailed”].

³² *Id.*

³³ Michael Kaplan, *How Central Asian US Allies are Using ISIS to Crack Down on Dissent, Get Funding*, International Business Times, March 11, 2016, available at <http://www.ibtimes.com/how-central-asian-us-allies-are-using-isis-crack-down-dissent-get-funding-2334003> [hereinafter “ISIS Funding”].

³⁴ Thousands Jailed, *supra* note 31.

³⁵ Human Rights Watch, *World Report 2016, Uzbekistan*, available at <https://www.hrw.org/world-report/2016/country-chapters/uzbekistan>.

³⁶ United States Department of State, *Country Reports on Human Rights Practices for 2015, Uzbekistan*, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dclid=252981> [hereinafter “Uzbekistan Human Rights Report”].

appointed by the president for renewable five-year terms.³⁷ 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.³⁸ 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.³⁹ The vast majority of criminal cases brought to trial result in a guilty verdict.⁴⁰ Verdicts are often based solely on confessions and witness testimony obtained through abuse or coercion.⁴¹ Defense counsel may request that judges reject confessions and investigate claims of torture, however, judges often fail to respond to such claims or reject them as baseless. Furthermore, claims of torture are not properly investigated by the courts.⁴²

Torture is widespread and used with impunity in Uzbekistan.⁴³ 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.⁴⁴ 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 service precincts.⁴⁵

Despite the implementation of habeas corpus amendments in 2008, the rights of detainees are violated at every stage of the criminal investigative and trial process.⁴⁶ Furthermore, 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.⁴⁷

Moreover, the Uzbek government has retaliated against attorneys who undertake representation of politically sensitive cases by disbarring them.⁴⁸ Such action has had a chilling effect that has also resulted in the compromise of political detainees' access to counsel.⁴⁹

3. Prison Conditions in Uzbekistan

Prison conditions in Uzbekistan are abysmal. Prisons suffer from overcrowding, poor and insufficient food and water quality, and minimal medical treatment, all of which amounts to

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

serious violations of domestic and international human rights law.⁵⁰ There is “routine and pervasive” torture throughout the prison, to the extent that torture has “become [a] defining [feature] of the Uzbekistani criminal justice system.”⁵¹ Those most vulnerable to torture or ill-treatment appear to be members or suspected members of banned Islamic movements and Islamist groups.⁵² Moreover, there is no independent monitoring of detention centers in Uzbekistan.⁵³

According to a report by Amnesty International, “prisoners are often denied adequate medical care and forced to work long hours doing physically demanding manual labor such as construction or making bricks, with basic tools, inadequate clothing, no protective gear, and little food and water.”⁵⁴ 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.

In addition to subjecting prisoners to cruel and degrading treatment, prison authorities often extend prison sentences for “violation of prison rules” or for “disobedience of legitimate orders.”⁵⁵ This power to extend prison sentences is set forth in Article 221 of Uzbekistan’s Criminal Code (the “Code”), which broadly defines “legitimate orders”; the Code is not comprehensive as to what constitutes a “violation” of these orders.⁵⁶ A published report by Human Rights Watch found that “wearing a white shirt” and “failure to lift a heavy object” were among some of the violations that extended prisoner’s sentences.⁵⁷ Use of this provision often serves as a pretext for extending prison sentences, especially for political prisoners.⁵⁸

B. The Arbitrary Detention of the Applicant

1. Arbitrary Arrest and Detention of the Applicant

The Applicant is a 34 year old Christian of Armenian descent and owned a fishery in Dzhizakh, Uzbekistan.⁵⁹ He is married to an Uzbek Muslim woman and has two young children.

On September 1, 2015, Gafur Karshibaev, the mayor of the town where the Applicant lives, threatened to have the Applicant imprisoned for his refusal to relinquish his successful fishery

⁵⁰ See Human Rights Watch, *Until the Very End: Politically Motivated Imprisonment in Uzbekistan* (September 25, 2014) available at <https://www.hrw.org/report/2014/09/25/until-very-end/politically-motivated-imprisonment-uzbekistan> [hereinafter “Until the Very End”].

⁵¹ Amnesty International, *Secrets and Lies: Forced Confessions Under Torture in Uzbekistan*, 4, 8 (April 15, 2015), available at <https://www.amnesty.org/en/documents/eur62/1086/2015/en/>.

⁵² *Id.*, at 4.

⁵³ Until the Very End, *supra* note 50. 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.

⁵⁴ *Journalist at Risk of Further Jail Time*, Amnesty International, UA 286/16, 1, (December 16, 2015).

⁵⁵ Until the Very End, *supra* note 50.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Armenian Accused, *supra* note 17.

business.⁶⁰ This harassment was not unprecedented, Mr. Karshibaev had reportedly called up the Applicant at least two or three times prior, cursing at him and demanding that he turn over his fishery.⁶¹ The Applicant was not the only successful businessman in his area—there was another woman with a similar business in the district—however the Applicant was the only businessman of Christian Armenian descent.⁶²

On September 3, 2015, one of the Applicant’s neighbors, Furkat Djuraev, disappeared.⁶³ The next day, on September 4, 2015, the Applicant and three acquaintances (Bektemir Umirzokov, an employee; Akmal Mamatmurodov, a friend; and Dilshod Alimov, the Applicant’s driver)⁶⁴ were coming home from the fishery when their car was stopped by National Security Service (“NSS”) officers.⁶⁵ These officers wore masks and placed a hood and handcuffs on the Applicant and his friends;⁶⁶ they did not present an arrest warrant.⁶⁷ The officers then drove the Applicant’s car to a nearby cemetery where they burned it.⁶⁸

When the men did not return home, their relatives reported them missing; at first the families assumed that they had been attacked by a local gang.⁶⁹ On September 5, 2015, relatives of two of the missing individuals received text messages from unknown mobile numbers, stating that the men had left to carry out a “jihad.”⁷⁰

On September 28, 2015, about 20 officers came to search the Applicant’s house.⁷¹ They did not tell the Applicant’s wife, who was present, what they were looking for but seized a religious text and four disks.⁷² When the officers returned these items at a later date, they returned 12 disks—including one which contained material relating to Islamic religious fundamentalism.⁷³

Forty days after the arrest of the Applicant and his colleagues, the authorities informed relatives that the men had been detained by authorities since September 4, 2015.⁷⁴ The authorities, however, did not tell the Applicant’s family on what charge he had been arrested.⁷⁵ His relatives believe that the Applicant was targeted because Mr. Karshibaev wanted to seize the fish farm for his own financial gain and, in part, because his ethnicity as an Armenian made him vulnerable.⁷⁶ Human rights organizations that monitor Uzbekistan have confirmed that such detentions are

⁶⁰ *Id.*

⁶¹ Communication with AB and BC, *supra* note 3.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Communication with CD, on file with author.

⁶⁵ Communication with AB and BC, *supra* note 3.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Fish Farmer Tortured, *supra* note 3; Communication with AB and BC, *supra* note 3.

⁷⁰ *Id.*

⁷¹ Communication with AB and BC, *supra* note 3.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Fish Farmer Tortured, *supra* note 3.

⁷⁵ Communication with AB and BC, *supra* note 3.

⁷⁶ ISIS Funding, *supra* note 33

“quite typical” and that successful business people are commonly subjected to politically-motivated prosecutions.⁷⁷

Local human rights defenders ascertained that the masked NSS officers had taken the Applicant and his colleagues to detention center in Tashkent, where they were being held incommunicado.⁷⁸ During this time, the police tortured the Applicant in order to force him to sign a confession.⁷⁹ After two months of continual beatings, the Applicant signed two blank pieces of paper.⁸⁰ His injuries from this torture were severe; five ribs on his right side and four ribs on his left side were broken.⁸¹ The prison authorities also administered electric shocks, the burn marks from which were visible on his arms during later court hearings.⁸² Although all of the eventual defendants were tortured, the Applicant suffered the worst abuse.⁸³ Later, the defendants were taken to the pre-trial detention center in Dzhizakh.⁸⁴

The Applicant’s lawyer made several attempts to meet with the Applicant, but was denied visitation until November 6, 2015, more than two months after the Applicant had been arrested.⁸⁵ During this meeting, the lawyer noticed visible signs of torture on the Applicant’s body.⁸⁶ After meeting with the Applicant’s family to tell them about these signs of torture, this first lawyer terminated his representation of the Applicant, claiming that he was afraid to continue because of the involvement of the NSS.⁸⁷ This first lawyer’s fears proved to be well-founded as the second lawyer engaged for the Applicant was arrested and charged with bribery and extortion in March 2016—just a few days before the final hearing for the Applicant.⁸⁸ The Applicant’s third lawyer, who used to work in law enforcement himself, has not reported any intimidation by the government.⁸⁹

Although the Applicant was able to see his various attorneys on several occasions after November 6, 2015, he was never able to speak with them confidentially; a NSS officer always sat in on these meetings.⁹⁰

2. Arbitrary Prosecution of the Applicant

⁷⁷ *Id.*

⁷⁸ Fish Farmer Tortured, *supra* note 3.

⁷⁹ *Id.*; Communication with AB and BC, *supra* note 3.

⁸⁰ Communication with AB and BC, *supra* note 3.

⁸¹ Communication with AB, *supra* note 4.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Fish Farmer Tortured, *supra* note 3.

⁸⁵ Communication with AB and BC, *supra* note 3.

⁸⁶ *Id.*

⁸⁷ Communication with AB, *supra* note 4.

⁸⁸ *Id.*; *Uzbekistan Release Lawyer of Jailed Ethnic Armenian*, RFE/RL (June 13, 2016), available at <http://www.rferl.org/content/uzbekistan-jailed-ethnic-armenian--released-lawyer/27795468.html> [hereinafter, “Uzbekistan Release Lawyer”]. After spending some time in a detention facility, this second lawyer was released and ordered to pay a fine. Communication with AB, *supra* note 4.

⁸⁹ Communication with AB, *supra* note 4.

⁹⁰ Communication with AB and BC, *supra* note 3.

The Applicant's family first saw the Applicant at a court hearing on January 6, 2016;⁹¹ this was the first time he was brought publicly before a judge.⁹² (There may have been some private initial hearings which occurred prior to January 6, 2016 in the basement of the NSS building, although as any such hearings were not public it is unclear what the nature of these hearings were.)⁹³ At this January 6 hearing the Applicant clearly displayed signs of torture; he was carried into the court on a stretcher because of his broken bones, his hands were bruised and he had visibly suffered significant weight loss.⁹⁴ Although a representative from the United States Embassy and one human rights activist was permitted to attend, this hearing was not fully open to the public.⁹⁵

The Applicant was charged with (1) plotting anti-constitutional activities and sabotage under Article 159 of the Uzbek Criminal Code; (2) production or dissemination of threatening materials under Article 161 of the Uzbek Criminal Code; (3) participation in a religious extremist organization under Article 244 of the Uzbek Criminal Code; and (4) theft under Article 169 of the Uzbek Criminal Code.⁹⁶ Despite the Applicant's Christian faith, Uzbek investigators accused the Applicant of setting up and leading a group that spread radical Islamic ideology in an attempt to overthrow Uzbekistan's constitutional order, and further accused his detained colleagues of planning to join the IS or some other radical Islamist group operating in the Middle East.⁹⁷

The Applicant's entire trial, including his appeal, lasted until March 19, 2016 and was comprised of about 9 hearings.⁹⁸ He was tried alongside his acquaintances, Furkat Djuraev, Bektemir Umirzokov, Akmal Mamatmurodov and Dilshod Alimov.⁹⁹ Prior to the trial, the government rounded up 16 of the defendants' friends and family, and kept them in police custody for about a month.¹⁰⁰ These detainees, which included the Applicant's younger brother, were tortured in an attempt to elicit testimony against the defendants.¹⁰¹ The Applicant's brother was eventually released after he threatened to commit suicide; [REDACTED].¹⁰²

At trial the prosecutor presented three non-defendant witnesses who had been detained for a month and tortured to provide testimony against the Applicant; of these three only one, the Applicant's neighbor Azamat, actually gave testimony to the court.¹⁰³ Azamat's testimony indicated that when the Applicant was at his barber shop, the Applicant had pointed at the NSS building and indicated that they should blow it up.¹⁰⁴ This testimony is contradicted by the fact that the NSS building is not visible from Azamat's barber shop.¹⁰⁵ During his cross-examination,

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ ISIS Funding, *supra* note 33.

⁹⁵ Communication with AB, *supra* note 4.

⁹⁶ Communication with AB and BC, *supra* note 3.

⁹⁷ Armenian Accused, *supra* note 17.

⁹⁸ Communication with AB and BC, *supra* note 3.

⁹⁹ Communication with AB, *supra* note 4.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

Azamat confirmed that he had been tortured in order to obtain this testimony and that what he had said was untrue.¹⁰⁶ (Shortly after appearing at trial, Azamat was released; he now suffers from liver sclerosis as a result of the torture he endured in custody.)¹⁰⁷ The two other prosecution witnesses refused to testify in court, claiming that they had nothing to say against the Applicant.¹⁰⁸

In addition, the prosecution introduced testimony from certain defendants against each other.¹⁰⁹ One of these co-defendants testified against the Applicant, but made it clear that his testimony has been coerced through torture.¹¹⁰

The Applicant was not permitted to present any evidence or witnesses in his defense.¹¹¹ He was allowed to speak for a few minutes during which he confirmed that his confession was procured through torture and that the charges—that he was in league with Islamic extremists—were ludicrous in light of the fact that he was a Christian.¹¹² The court ignored both of these arguments.¹¹³

On February 19, 2016, the Applicant was convicted on and sentenced to seven years in prison before the Dzhizakh Criminal Court.¹¹⁴ The Applicant's wife was not permitted into the courtroom to hear the verdict.¹¹⁵ The other defendants, who had all pled guilty and asked for forgiveness, were sentenced to prison terms between five and one half years and twelve years.¹¹⁶

The Applicant appealed his conviction on March 4, 2016.¹¹⁷ On March 19, 2016, the court of appeals upheld the Applicant's conviction.¹¹⁸ On May 5, 2016, the Applicant filed an appeal to the Supreme Court.¹¹⁹ This appeal, however, was apparently ignored or misplaced by Dzhizakh court officials; the Applicant plans to resubmit this appeal soon.¹²⁰

On April 13, 2016, a State run television station called "Tashkent" aired a documentary about the Applicant and his co-defendants, depicting them as terrorists.¹²¹

3. Current Status

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Fish Farmer Tortured, *supra* note 3.

¹¹⁵ *Id.*

¹¹⁶ Uzbekistan Release Lawyer, *supra* note 88.

¹¹⁷ Anush Martirosian, *Armenian Jailed in Uzbekistan for Islamic Terrorism Appeals Verdict*, RFE/RL, (March, 4, 2016), available at <http://www.azatutyun.mobi/a/27589342.html>.

¹¹⁸ Communication with AB, *supra* note 4.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ ЎзТВнинг бўхтонга тўла фильми ("Unjust TV Movie"), (April 28, 2016), available at <https://www.youtube.com/watch?v=IEC7KecAt9Q>.

The Applicant's health has deteriorated rapidly while in prison. He has lost dangerous amounts of weight and has been hospitalized twice since his conviction.¹²² After his conviction, the Applicant was forced to do hard manual labor carrying bricks despite his broken bones and other injuries caused by torture.¹²³ By May 21, 2016 he was unable to walk and, after significant pressure from his family, the authorities transferred the Applicant to a hospital for treatment for spinal injuries.¹²⁴ The prison authorities shortly thereafter declared him healed, and brought him back to prison (and forced labor), but by early August the Applicant was again unable to walk.¹²⁵ He was hospitalized for the second time on August 21, 2016.¹²⁶ [REDACTED]. [REDACTED].¹²⁷ Most recently, the Applicant has reported that he is suffering [REDACTED], and has requested his relatives to bring painkillers to him whenever they visit the prison.¹²⁸

The Applicant is provided salty drinking water in prison, and as a result has constant diarrhea.¹²⁹ Despite his health problems, in the past he has been forced to work in a factory producing bricks and, despite frigid temperatures, only has access to cold water to wash his feet at the end of the day.¹³⁰

The Applicant's case has drawn considerable attention and support. International NGOs Amnesty International,¹³¹ Human Rights Watch¹³² and Aid to Church in Need¹³³ have advocated for his case as have the local NGO's Human Rights Society of Uzbekistan¹³⁴ and the Avakian + 4 Committee.¹³⁵ Moreover, the United States Commission on International Religious Freedom¹³⁶ and the United Kingdom Foreign and Commonwealth Office¹³⁷ have commented on his case.

II. Legal Analysis

¹²² Communication with AB, *supra* note 4.

¹²³ Communication with AB and BC, *supra* note 3.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Communication with AB, *supra* note 4.

¹²⁹ *Id.*

¹³⁰ *Id.* Most recently, the Applicant has reported that he is no longer being forced to work in the brick factory. *Id.*

¹³¹ Amnesty International, *Uzbekistan: Ensure Fair Trial for Aramais Avakian*, (February 19, 2016), available at <http://www.amnestyusa.org/get-involved/take-action-now/uzbekistan-ensure-fair-trial-for-aramais-avakian-ua-4016>.

¹³² Human Rights Watch, *Uzbekistan: 3 More Years for Long-Held Activist*, (November 3, 2016), available at <https://www.hrw.org/news/2016/11/03/uzbekistan-3-more-years-long-held-activist>.

¹³³ Aid to Church in Need, *Uzbekistan: Religion Freedom Report 2016*, (2016), available at <http://religious-freedom-report.org/report/uzbekistan/?pdf=true>.

¹³⁴ Human Rights Society of Uzbekistan, *Fish Farmer Aramais Avakian was Sentenced to Seven Years in Prison on 19 February*, (February 19, 2016), available at <http://en.hrsu.org/archives/2241>.

¹³⁵ Radio Free Europe /Radio Liberty, *Armenian Jailed in Uzbekistan for Islamic Extremism Appeals Verdict*, (March 4, 2016), available at <http://www.azatutyun.am/a/27589342.html>.

¹³⁶ USCIRF 2016 Annual Report, *supra* note 26.

¹³⁷ United Kingdom Foreign & Commonwealth Office, *Human Rights Priority Country Update Report: January to June 2016*, (July 21, 2016), available at <https://www.gov.uk/government/publications/uzbekistan-human-rights-priority-country/human-rights-priority-country-update-report-january-to-june-2016>.

The arrest and detention of the Applicant is arbitrary¹³⁸ under Categories III and V as established by the Working Group. 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. The detention is arbitrary under Category V because the Applicant was targeted for detention in part due to his Armenian ethnicity and Christian religion.

A. Category III

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.”¹³⁹ The minimum international standards of due process applicable in this case are established by the International Covenant on Civil and Political Rights (“ICCPR”), the Universal Declaration of Human Rights (“UDHR”), and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“Body of Principles”).¹⁴⁰

1. Uzbekistan Violated the Applicant's Right not to be Subjected to Arbitrary Arrest

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.”¹⁴¹ This right is reiterated by Article 9 of the UDHR and Principles 2 and 36(2) of the Body of Principles.¹⁴² 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.”¹⁴³ Article 9(1) requires compliance with domestic rules that define such procedures for arrest such as identifying the officials who are authorized to make arrest, specifying when a warrant is required, and permitting access to counsel.¹⁴⁴ The Committee has previously found that an arrest which was not authorized by the prosecutor and was done in the absence of a detainee's counsel, in violation of the relevant domestic provisions,

¹³⁸ 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.” *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. *Id.* “No one shall be subjected to arbitrary arrest, detention or exile.” *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...” *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”].

¹³⁹ Revised Methods of Work, *supra* note 15, at ¶ 8(c).

¹⁴⁰ 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. *Id.*, at ¶ 7(a).

¹⁴¹ ICCPR, *supra* note 138, at art 9(1).

¹⁴² UDHR, *supra* note 138, at art 9; Body of Principles, *supra* note 138, at principles 2 and 36(2).

¹⁴³ UN Human Rights Committee, *General Comment No. 35*, UN Doc. CCPR/C/GC/35, ¶ 23, (December 16, 2014).

¹⁴⁴ *Id.*

violated Article 9(1) of the ICCPR.¹⁴⁵

Under Uzbek law, no one may be taken into custody except pursuant to a court order or warrant of a prosecutor.¹⁴⁶ A suspect has the right to be informed of what he is accused of and to demand to be questioned no later than twenty-four hours from the moment of the apprehension.¹⁴⁷ Detainees are entitled to request a hearing before a judge to determine whether they remain incarcerated or are released before trial.¹⁴⁸ Furthermore, the arresting authority is required to notify a relative of a detainee about the detention.¹⁴⁹ Detainees have the right to legal counsel from the time of arrest,¹⁵⁰ have the right to remain silent and must be informed of the right to counsel.¹⁵¹ Detention without formal charges is limited to 72 hours, although a prosecutor can request an additional 48 hours, after which time the person must be charged or released.¹⁵²

Here, the arrest of the Applicant was not performed in compliance with Uzbek law. The authorities failed to obtain an arrest warrant from the prosecutor's office before arresting the Applicant. Furthermore, the authorities did not inform relatives of the Applicant's arrest until forty days after he had been detained, nor did they inform the Applicant or his family on what charges he had been arrested. The arrest also does not comply with Uzbek law which guarantees that detainees be provided with the assistance of counsel from the moment of apprehension. The Applicant's lawyer made several attempts to meet with the Applicant, but was denied visitation until November 6, 2015, more than two months after the Applicant's arrest. Finally, the authorities failed to question the Applicant within 24 hours of his arrest, and detained him without formal charges for forty days; well in excess of the 72 hours allowed by law.

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.

2. Uzbekistan Violated the Applicant's Right to Release Pending Trial and Habeas Corpus

Article 9(3) and (4) of the ICCPR protect an individual's right to challenge the legality of his continued detention. This right is reiterated by Principles 4, 11, 32 and 37 of the Body of Principles.¹⁵³ Article 9(3) of the ICCPR requires that a detainee "be brought promptly before a judge or other officer authorized by law to exercise judicial power" and "applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity."¹⁵⁴ The Committee has interpreted the term "promptly" to be within about 48

¹⁴⁵ *Maksudov et al. v. Kyrgyzstan*, UN Doc CCPR/C/93/D/1461, 1462, 1476 & 1477/2006, ¶ 12.2, (July 31, 2008).

¹⁴⁶ Article 18 of the Criminal Procedure Code of the Republic of Uzbekistan.

¹⁴⁷ Article 48 of the Criminal Procedure Code of the Republic of Uzbekistan.

¹⁴⁸ Uzbekistan Human Rights Report, *supra* note 36.

¹⁴⁹ *Id.*

¹⁵⁰ Article 48 of the Criminal Procedure Code of the Republic of Uzbekistan.

¹⁵¹ Uzbekistan Human Rights Report, *supra* note 36.

¹⁵² *Id.*

¹⁵³ Body of Principles, *supra* note 138, at principles 4, 11, 32 and 37.

¹⁵⁴ General Comment No. 35, *supra* note 143, at ¶ 32.

hours, except in exceptional circumstances.¹⁵⁵ This guarantee not only serves as a check on arbitrary detention, but also provides an important safeguard for other related rights, such as freedom from torture.¹⁵⁶ Article 9(4) of the ICCPR extends this principle of habeas corpus to non-criminal detainees as well.¹⁵⁷

The Committee has also determined that incommunicado detention inherently violates Article 9(3) of the ICCPR¹⁵⁸ and Principles 15, 18 and 19 of the Body of Principles confirm that a detainee has the right to communicate with his family and counsel.¹⁵⁹

As well as requiring that detainees be allowed to promptly challenge their detention, article 9(3) of the ICCPR also enshrines the right to an individual's release pending trial by confirming that "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody"¹⁶⁰ The Committee has found that "[d]etention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. . . . Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances."¹⁶¹ Principles 38 and 39 of the Body of Principles further confirm that, except in special cases, a criminal detainee is entitled to release pending trial.¹⁶²

Here, Uzbekistan violated the Applicant's rights under Articles 9(3) and 9(4) by holding the Applicant incommunicado for 40 days and refusing to let him promptly challenge his detention before a judicial officer. Just as feared by the Committee, Uzbekistan violation of Article 9(3) and (4) enabled other violations, such as torture, to occur while the Applicant was being held without access to his attorney or family.

Moreover, although the Applicant's trial did not start until January 6, 2016—four months after his arrest—he was not released pending trial. No individualized reasons for such refusal were given. Thus, in contradiction to the requirement that pre-trial detention be the exception rather than the rule and that such pre-trial detention be based on individualized determination that it is both reasonable and necessary to deny release given a particular defendant's circumstances, Uzbekistan impermissibly defaulted to continuing the detention of the Applicant.

By holding the Applicant incommunicado, by refusing to bring him promptly before a judge to challenge his detention, and by denying him release pending trial without explanation, Uzbekistan has violated Articles 9(3) and (4) of the ICCPR and Principles 11, 15, 18, 19, 32, 37, 38 and 39 of the Body of Principles.

¹⁵⁵ *Id.* at ¶ 33.

¹⁵⁶ *Id.*, at ¶ 34. Other rights that may be at risk are those guaranteed by articles 6, 7, 10 and 14 of the ICCPR. *Id.*, at ¶ 35.

¹⁵⁷ *Id.*, at ¶ 39.

¹⁵⁸ *Id.*, at ¶ 35.

¹⁵⁹ Body of Principles, *supra* note 138, at principles 15, 18 and 19.

¹⁶⁰ ICCPR, *supra* note 138, at art 9(3).

¹⁶¹ General Comment No. 35, *supra* note 143, at ¶ 38.

¹⁶² Body of Principles, *supra* note 138, at principles 38 and 39.

3. Uzbekistan Violated the Applicant's Right to Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment

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.”¹⁶³ 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.”¹⁶⁴ This right is reiterated by Article 5 of the UDHR, Principle 6 of the Body of Principles and Articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), to which Uzbekistan is party. In addition, Article 26 of the Constitution guarantees citizens the right to freedom from torture.¹⁶⁵ Furthermore, Uzbek law provides that “nobody may be subject to violence, torture or other cruel or degrading treatment.”¹⁶⁶

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.¹⁶⁷ 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”,¹⁶⁸ as well as in Principle 21(2) 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.”¹⁶⁹

Uzbekistan’s treatment of the Applicant during his detention violates international and domestic law on the prohibition of torture and cruel, inhuman or degrading treatment. While being held at a detention center in Tashkent, the Applicant was tortured and forced to sign a confession. He suffered continual beatings over a two-month period which resulted in five broken ribs on his right side and four broken ribs on his left side as well as bruises on his hands. He was also administered electric shocks.

In addition to the torture inflicted during interrogations, the Applicant was kept in poor prison conditions. The Applicant is given salty drinking water in prison, and as a result, he has constant diarrhea. Despite his broken bones and other injuries caused by torture, in the past he has been forced to do hard manual labor carrying bricks at a factory and, despite frigid temperatures, only has access to cold water to wash with at the end of the day. Eventually, the Applicant was unable to walk and had to be hospitalized for spinal injuries on two separate occasions; after the first such hospitalization he was forced to return to performing manual labor. Although the Applicant

¹⁶³ ICCPR, *supra* note 138, at art. 7

¹⁶⁴ *Id.*, at art. 10(1).

¹⁶⁵ Constitution of Uzbekistan of 1992, at art. 26.

¹⁶⁶ Article 17 of the Criminal Procedure Code of the Republic of Uzbekistan.

¹⁶⁷ ICCPR, *supra* note 138, at art. 14(3)(g).

¹⁶⁸ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, A/RES/39/46, art. 1(1), (December 10, 1984).

¹⁶⁹ Body of Principles, *supra* note 138, 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).

is currently not being forced into manual labor, he remains at risk of being returned to work at the brick factory at any time.

In its brutal attempt to obtain forced confessions and in keeping the Applicant in poor prison conditions, Uzbekistan has violated the Applicant's right to be free from cruel, inhuman and degrading treatment and torture under Articles 7, 10(1) and 14(3)(g) of the ICCPR, Article 5 of the UDHR, Articles 1 and 4 of the CAT, Principles 6 and 21(2) of the Body of Principles and Article 26 of the Constitution.

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

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."¹⁷⁰ Article 10 of the UDHR reiterates this requirement.¹⁷¹

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."¹⁷² Moreover, a public hearing requires not just that some individuals unconnected with the proceedings are permitted into the courtroom, but that the hearing be open to the general public, including media, without limiting entrance to a select group of people.¹⁷³ Here, however, the trial was not open to the general public. Any hearings which occurred prior to January 6 were completely closed to the public and the hearings which were held on January 6 or later were only open to a select group. Although this select group did include individuals unconnected with the Uzbek government, such as a diplomat from the U.S. Embassy and an Uzbek human rights activist, the requirement of a "public" trial demands that, in the absence of a compelling reason otherwise, the trial be fully open to media and other interested persons.

The requirement of judicial independence under Article 14(1) establishes an objective standard, which is treated as an "absolute requirement[] not capable of limitation."¹⁷⁴ 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."¹⁷⁵ Moreover, the fairness standard must be measured by an objective "reasonableness standard" – that is, the court must appear to a reasonable observer to be impartial.¹⁷⁶ 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."

¹⁷⁰ ICCPR, *supra* note 138, at art 14(1).

¹⁷¹ UDHR, *supra* note 138, at art. 10.

¹⁷² UN Human Rights Committee, *General Comment No. 32*, UN Doc. CCPR/C/GC/32, ¶ 28, (August 23, 2007).

¹⁷³ *Id.*, at ¶ 29.

¹⁷⁴ Alex Conte & Richard Burchill, *Defining Civil and Political Rights*, 165, (Ashgate 2009 2nd ed.).

¹⁷⁵ General Comment No. 32, *supra* note 175, at ¶ 13

¹⁷⁶ *Id.*, at ¶ 21.

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.¹⁷⁷ 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.”¹⁷⁸

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, 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, all of the witness testimony presented by the prosecutor at the Applicant’s trial was coerced by torture, including the Applicant’s own confession.

The Applicant was tried along with four of his acquaintances, Furkat Djuraev, Bektemir Umirzokov, Akmal Mamatmurodov and Dilshod Alimov. Prior to the trial, the government rounded up 16 of the defendants’ friends and family, which included the Applicant’s younger brother, and kept them in police custody for approximately one month, during which time they were tortured in an attempt to elicit testimony against the defendants. At trial, the prosecution introduced testimony from one of the co-defendants who testified against the Applicant, but confirmed that his testimony has been coerced through torture.

In addition, the prosecutor presented three non-defendant witnesses who had been detained for a month and tortured to provide testimony against the Applicant; of these three only one, the Applicant’s neighbor Azamat, actually gave testimony to the court. Azamat’s testimony indicated that when the Applicant was at his barber shop, the Applicant had pointed at the NSS building and indicated that they should blow it up. This testimony is contradicted by the fact that the NSS building is not visible from Azamat’s barber shop. During his cross-examination, Azamat confirmed that he had been tortured in order to obtain this testimony and that what he had said was untrue. The two other prosecution witnesses refused to testify in court, claiming that they had nothing to say against the Applicant.

The Applicant was not permitted to present any evidence or witnesses in his defense. He was allowed to speak for only a few minutes during which he confirmed that his confession was procured through torture and that the charges—that he was in league with Islamic extremists—were ludicrous in light of the fact that he was a Christian. The court disregarded both of these arguments.

The semi-private nature of the hearings 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. The court’s refusal to allow the Applicant to present any evidence or witnesses in his defense, as well as its refusal to investigate the claims of torture—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

¹⁷⁷ ICCPR, *supra* note 138, at art 14(1). This right is also embedded in Article 10 of the UDHR. UDHR, *supra* note 138, at art. 10.

¹⁷⁸ General Comment No. 32, *supra* note 175, at ¶ 13.

the prosecution in violation of the requirement that the tribunal be independent and impartial, as guaranteed by Article 14(1) of the ICCPR and Article 10 of the UDHR.

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

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.”¹⁷⁹ Article 11(1) of the UDHR and Principle 36(1) of the Body of Principles also guarantee this right.¹⁸⁰ The Committee has further confirmed that the presumption of innocence is “fundamental to the protection of human rights.”¹⁸¹

Here, the government violated the Applicant’s right to the presumption of innocence by planting evidence in order to support its allegation that the Applicant was involved in setting up and leading a group that spread radical Islamic ideology, despite the fact that, *inter alia*, the Applicant is a Christian of Armenian descent. On September 28, 2015, about 20 officers came to search the Applicant’s house and seized a religious text and four disks. When the officers returned these items at a later date, they returned 12 disks—including one which contained material relating to Islamic religious fundamentalism.

It is unclear to what extent the court may have relied on the incriminating disks as the basis for the Applicant’s conviction, however in attempting to so frame the Applicant, the government was obviously assuming the Applicant’s guilt far before his conviction, in violation of his 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.

6. Uzbekistan Violated the Applicant’s Right to Communicate with Counsel

Article 14(3)(b) of the ICCPR guarantees a criminal defendant the right “to communicate with counsel of his own choosing.”¹⁸² The Committee has clarified that such guarantee “requires that the accused is granted prompt access to counsel”¹⁸³ and that “[s]tate parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”¹⁸⁴ Principles 18(1) and (3) of the Body of Principles further provide for the right of a detainee to be assisted by and communicate with his legal counsel without delay and that such right “may not be suspended or restricted save in exceptional circumstances”¹⁸⁵

The right to communicate with counsel also includes the requirement that “Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.”¹⁸⁶ Moreover, Principle 18(4) of the Body of Principles confirms that client-attorney interviews may not be held within the hearing of a law

¹⁷⁹ ICCPR, *supra* note 138, at art. 14(2).

¹⁸⁰ UDHR, *supra* note 138, at art. 11(1); Body of Principles, *supra* note 138, at principle 36(1).

¹⁸¹ General Comment No. 32, *supra* note 175, at ¶ 30.

¹⁸² ICCPR, *supra* note 138, at art. 14(3)(b).

¹⁸³ General Comment No. 32, *supra* note 175, at ¶ 34.

¹⁸⁴ General Comment No. 35, *supra* note 143, at ¶ 35.

¹⁸⁵ Body of Principles, *supra* note 138, at principle 18(1) and (3).

¹⁸⁶ General Comment No. 32, *supra* note 175, at ¶ 34.

enforcement official.¹⁸⁷

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.”¹⁸⁸ 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” and to have confidential meetings with their counsel.¹⁸⁹

Here, the Applicant was denied access to his lawyer for more than two months after his arrest, during which time he was tortured to confess to a crime that he did not commit. In addition, he was never able to speak with his attorney confidentially as a NSS officer was always present during these meetings. Furthermore, the Applicant found it difficult to find an attorney who could represent him because, in the case of the first attorney hired, such attorney’s fear of the consequences that might ensue from taking on such political case and, in the case of the second attorney hired, because of such consequences in fact occurring—i.e., the arrest and detention of the second attorney just prior to the Applicant’s final hearing.

In light of this refusal to allow communication between attorney and detained client during the initial pre-hearing detention, in barring the Applicant from communicating with his attorney in private and considering the climate of fear surrounding the representation of the Applicant, the government violated the Applicant’s right to communicate with counsel in violation of Article 14(3)(b) of the ICCPR and principles 18(1) and (3) of the Body of Principles.

B. Category V

The arrest and detention of the Applicant is arbitrary under Category V. A deprivation of liberty is arbitrary under Category V where “the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights.”¹⁹⁰

Article 2(1) of the ICCPR requires state parties to protect the rights guaranteed in the ICCPR without distinction of any kind. Article 26 of the ICCPR specifically guarantees that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁹¹ In recognition of the importance of this right, Article 4(1) of the ICCPR confirms that states may not derogate from their obligation of non-discrimination even in times

¹⁸⁷ Body of Principles, *supra* note 138, at principle 18(2).

¹⁸⁸ Article 46 of the Criminal Procedure Code of the Republic of Uzbekistan.

¹⁸⁹ Article 48 of the Criminal Procedure Code of the Republic of Uzbekistan.

¹⁹⁰ Revised Methods of Work, *supra* note 15, at ¶ 8(e).

¹⁹¹ ICCPR, *supra* note 138, at arts. 2(1) and 26.

of emergency.¹⁹² This right is reiterated by Article 7 of the UDHR and Principle 5(1) of the Body of Principles.¹⁹³ Uzbekistan is also party to the International Convention on the Elimination of All Forms of Racial Discrimination which prohibits all forms of discrimination based on ethnic origin and guarantees the right to equal treatment before tribunals of law.¹⁹⁴ Moreover, the Constitution guarantees that all citizens “shall have equal rights and freedoms, and shall be equal before the law, without distinction by sex, race, nationality, language, religion, social origin, convictions, individual and social status.”¹⁹⁵

There is some evidence that the Applicant was targeted for detention and particularly brutal torture, in part because of his Armenian ethnicity and Christian religion. Mr. Karshibaev, the mayor of the town in which the Applicant lived, threatened to have the Applicant imprisoned for his refusal to relinquish his successful fishery business. However, although the Applicant was not the only successful businessperson in his area he was the only businessperson of Christian Armenian descent. As described in section IV.A.1 above, Christians in Uzbekistan have been increasingly punished for their faith. Considering that there were other businesspeople who Mr. Karshibaev could have harassed and imprisoned, it seems likely that the Applicant was selected for detention by Mr. Karshibaev because of his more vulnerable position in society as an Armenian Christian.

Moreover, the Applicant was more grievously tortured than the other five men who were arrested alongside of him, a fact which the Applicant’s family attributes to his Armenian Christian ethnicity and religion. (In this context it is interesting to note that the Applicant’s brother, also an Armenian Christian, was also aggressively tortured and released only after he threatened to commit suicide.)

Although no public official ever made a statement about targeting the Applicant because he was an Armenian Christian, it is clear that he was singled out for detention and particularly bad treatment while in detention. Considering that the Applicant is a member of a minority religion and ethnicity within Uzbekistan, and looking at the totality of these circumstances, it is likely that the Applicant was targeted in part because of his Armenian ethnicity and Christian religion, in violation of his right to non-discrimination before the law.

C. Conclusion

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 in part because of his Armenian ethnicity and Christian religion. As such, the Applicant’s detention is arbitrary pursuant to Categories III and V.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES,

¹⁹² *Id.*, at art. 4(1).

¹⁹³ UDHR, *supra* note 138, at art. 7; Body of Principles, *supra* note 138, at principle 5(1).

¹⁹⁴ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), 20 UN GAOR Supp. (No. 14) at 47, UN Doc. A/6014 (1966), 660 UNT.S. 195; entered into force 4 January 1969, at art. 5.

¹⁹⁵ Constitution of Uzbekistan of 1992, at art. 18.

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 February 19, 2016, the Applicant was convicted on and sentenced to seven years in prison before the Dzhizakh Criminal Court for (1) plotting anti-constitutional activities and sabotage under Article 159 of the Uzbek Criminal Code; (2) production or dissemination of threatening materials under Article 161 of the Uzbek Criminal Code; (3) participation in a religious extremist organization under Article 244 of the Uzbek Criminal Code and (4) theft under Article 169 of the Uzbek Criminal Code.

The Applicant appealed his conviction on March 4, 2016. On March 19, 2016, the court of appeals upheld the Applicant's conviction. On May 5, 2016, the Applicant filed an appeal to the Supreme Court. This appeal, however, was apparently ignored or misplaced by Dzhizakh court officials; the Applicant plans to resubmit this appeal soon.

VI. FULL NAME AND ADDRESS OF THE PERSONS SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

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. Freedom Now, in collaboration with Zora Ristanovic, Esq., has been retained by the Applicant as international counsel.

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