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Views

Communication No. 1478/2006

Submitted by:	Nikolai Kungurov (represented by counsel, Morris Lipson)
Alleged victim:	The author
State party:	Uzbekistan
Date of communication:	17 March 2006 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 21 June 2006 (not issued in document form)
Date of adoption of Views:	20 July 2011

* Made public by decision of the Human Rights Committee.

Subject matter:	Denial of registration of human rights association by the State party"s authorities.
Substantive issues:	Right to freedom of expression; right to freedom of association; permitted restrictions.
Procedural issue:	*Actio popularis*
Articles of the Covenant:	2; 19 and 22
Article of the Optional Protocols:	1

On 20 July 2011, the Human Rights Committee adopted the annexed text as the Committee"s Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1478/2006.

[Annex]

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (102nd session)

concerning

Communication No. 1478/2006**

Submitted by:	Nikolai Kungurov (represented by counsel, Morris Lipson)
Alleged victim:	The author
State party:	Uzbekistan
Date of communication:	17 March 2006 (initial submission)

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

Meeting on 20 July 2011,

Having concluded its consideration of communication No. 1478/2006, submitted to the Human Rights Committee on behalf of Mr. Nikolai Kungurov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

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

1.1 The author of the communication is Mr. Nikolai Kungurov, an Uzbek national born in 1962, residing in Yangiyul, Uzbekistan. He claims to be a victim of violations by Uzbekistan of his rights under article 19 and article 22, read in conjunction with article 2, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 28 December 1995. The communication is submitted by counsel, Mr. Morris Lipson, acting in cooperation with the non-governmental organisation „Article 19".

** The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

The text of an individual opinion signed by Committee member Mr. Fabían Omar Salvioli is appended to the present Views.

1.2 On 11 October 2006, the State party requested the Committee to examine the admissibility of the communication separately from its merits, in accordance with rule 97, paragraph 3, of the Committee's Rules of Procedure. On 17 October 2006, the Special Rapporteur for New Communications and Interim Measures decided, on behalf of the Committee, to examine the admissibility of the communication together with the merits.

The facts as presented by the author

2.1 On 4 June 2003, the author, together with 11 other individuals, held the constituent assembly of a non-governmental organisation (NGO) „Democracy and Rights" which adopted its statutes. According to the statutes, aims and objectives of „Democracy and Rights" included the promoting and strengthening of the rule of law, protecting equality, and protecting the rights and freedoms of all individuals living in Uzbekistan. Activities foreseen in pursuit of these objectives, and listed in paragraph 2.1 of the statutes, included monitoring legislative and legal practice, preparing recommendations relating to human rights for bodies of government, monitoring human rights abuse and assisting victims of such abuse, and disseminating information relating to the protection of human rights throughout the country.

2.2 On approximately 5 August 2003, in preparation for the submission of a registration application for „Democracy and Rights", the author visited the Ministry of Justice (MoJ) to consult on what he would need to include in the application. The officials with whom he met quoted him information from a set of outdated registration rules. The author pointed out to the officials that a new set of rules had recently come into effect, and was told that the old rules were still being used by the MoJ. Shortly thereafter, another member of „Democracy and Rights" visited the MoJ to obtain further information on registration, and was informed that no NGO proposing to work on human rights would be granted registration.

First registration application

2.3 On 7 August 2003, the author submitted application materials to the MoJ in Tashkent, along with a registration fee of 20 minimum monthly salaries (approximately USD 160). The application was for registration as a national NGO, which would have allowed „Democracy and Rights" to carry out the information-dissemination aspect of its proposed activities throughout the country.

2.4 Applicable law sets a two month deadline for official responses to registration applications; therefore, there should have been an official response by 7 October 2003. Not having heard any response by that date, the author visited the MoJ on 13 October 2003. An official informed him that a decision had been taken on the application, but he refused to give the author a copy of the decision. The following day, a courier arrived at the author"s workplace with a copy of a letter from the MoJ dated 8 October 2003.

2.5 The letter from the MoJ (first denial letter) stated that the registration application was being returned „without consideration".[1] In this regard, the author submits that article 23 of the Law „On Non-governmental Non-profit Organisations" (the NGO Law) is explicit in setting out only two possible responses to a registration application, providing that „the justice organ … *shall* consider and make a decision regarding *granting or denial* of state registration to" NGOs (emphases added). Despite this, rule 3(3) of the Rules for Considering Applications Pertaining to Registration of Statutes of Public Associations

[1] The author provides a detailed description of the registration regime in Uzbekistan, including an explanation of returns „without consideration." He notes that that such returns amount in effect to a denial of registration.

Functioning on the Territory of the Republic of Uzbekistan (Public Association Registration Rules)[2] provides for a third category of response by the registering authority: such authority, in the case of applications for registration as a pubic association, may leave an application „without consideration". Applications may be left „without consideration where some of the documents are missing or „upon circumstances mentioned" in rule 2 (regarding the contents of documents to be submitted in an application) or where the name applied for is already in use by another registered public association. The author refers to the legal opinion of the Head of the Tashkent City Branch of the Association of Advocates of Uzbekistan (legal opinion), concluding, *inter alia*, that, given the explicit provisions of the NGO Law and the Law „On Public Associations in the Republic of Uzbekistan" (Public Associations Law), returns of registration applications „without consideration" are illegal.

2.6 The author further submits that it may make a considerable difference whether an application for registration is left „without consideration", rather than denied. While article 26 of the NGO Law guarantees recourse to the courts for *denials* of registration applications, and rule 7 of the Public Association Registration Rules is in accord, rule 8 of the latter goes on to provide that the appropriate recourse, in the event of an application being left without consideration, is to resubmit the application „after eliminating the shortcomings". He adds, therefore, that the decision to leave an application „without consideration" is not necessarily appealable in court.[3]

2.7 The first denial letter listed 26 different „defects" in the registration materials. The „defects" varied widely in substance. Some were stylistic or grammatical shortcomings, others related to alleged difficulties regarding how the organisation had been structured, and yet others related to problems with certain proposed activities. The main „defects" were that: (1) the title of the statutes should have been typed in Latin letters and the word „societal" needed to be changed to „public"; (2) the dates of birth of the initial members of „Democracy and Rights" were missing from the submitted list containing their names; (3) certain abbreviations needed to have been written out in full; (4) the name „Uzbekistan Committee for the protection of individual rights" was unlawful according to article 46 of the Civil Code, and needed to be stricken from paragraphs 6.1 and 6.2 of the statutes; (5) „relevant parts of the statutes need[ed] proof reading to rectify grammar and stylistic errors"; (6) the scope of competence of the general meeting should have included the right of amending the statutes and other constituent documents; (7) „the words „court of arbitration" and „tribunal" need[ed] to be eliminated from [paragraph] 1.3 of the statutes, because the current legislation of Uzbekistan does not provide for arbitration courts or tribunals"; (8) every activity outlined in paragraph 2.1 of the statutes, which is the principal provision relating to the proposed activities of „Democracy and Rights", was „within the scope of competence of state organs and therefore should [have been] re-edited entirely"; and (9) in alleged violation of a condition of being a national (rather than a local) NGO, the application materials contained no showing that „Democracy and Rights" functioned in certain parts of the country, including the Republic of Karakalpakstan, as well as „in the city of Tashkent and provinces".

2.8 On 5 November 2003, the author appealed this return of the registration application directly to the Supreme Court. A right to appeal a denial of registration to the Supreme Court is explicitly provided for in article 12 of the Public Associations Law. The author

[2] The Public Association Registration Rules were endorsed by Resolution No. 132 of the Council of Ministers on 12 March 1993.

[3] The author notes that, on the one hand, the text of these Rules suggests that such returns „without consideration" may not be appealed, and he is unaware of other attempts to appeal such returns; on the other hand, his appeal was in fact heard – though the permissibility of the appeal was not raised as an issue by the authorities.

submitted, as part of his appeal materials, a brief (the November 2003 brief). The Supreme Court, in a decision dated 12 November 2003, advised the author that he should „file a complaint with [his] arguments and testimonies to the appropriate inter-district civil court".

2.9 On 14 December 2003, the author applied to the Mirzo-Ulugbek Inter-District Court of Tashkent City (the Inter-District Court), to which he submitted the November 2003 brief. In that brief, he argued comprehensively that none of the *substantive* objections in the first denial letter had merit in law. In particular, he argued in detail that no law requires NGOs wishing to be registered as national to show a presence in every region of the country. He refers to the legal opinion, confirming, *inter alia*, the author's argument that this latter requirement is actually illegal under Uzbek law.

2.10 The author did acknowledge in the November 2003 brief that the application materials had contained three technical errors. These were errors that could have been corrected in a matter of minutes; and their occurrence did not justify the effective refusal to grant „Democracy and Rights" registration, which the brief described as „unlawful". The author also argued in the November 2003 brief that the return of the application „without consideration" was in violation of the NGO Law, which provides only for approvals or express denials of registration applications. He refers to the legal opinion, confirming that returns of applications „without consideration" are illegal under Uzbek law. Finally, the November 2003 brief asserted that the failure to register „Democracy and Rights" as a national NGO violated article 22 of the Covenant.

2.11 At the hearing held by the Inter-District Court, the representative of the MoJ asserted that even a single „shortcoming" would suffice to justify the return of a registration application „without consideration", and that the author had admitted himself that the application had contained certain „shortcomings". The Inter-District Court held against the author, in a decision dated 12 February 2004. Its grounds were that (1) the author had failed to „submit the list of the initiative group with dates of birth in three copies, certified by a notary" – this, notwithstanding that the author had explained that he had included such a list in the original application submission, and had attached a copy of the list, notarized and containing the dates of birth of all members of the initiative group, to the November 2003 brief; (2) the statutes „contained clauses that contradicted the current legislation," including that (a) it referred to courts of arbitration even though none existed in Uzbekistan – notwithstanding that the November 2003 brief had made it clear that these references had been inserted to provide for arbitration in third countries, such as Russia, in the event that Democracy had dealings with Russian NGOs or other entities; (b) „a separate public organisation may not put the protection of rights and freedoms of all citizens of the Republic of Uzbekistan as an aim"; and (3) the statutes contradicted themselves, providing in paragraph 1.1 that „Democracy and Rights" would act in the territory of the Republic of Uzbekistan, while providing in paragraph 4.1 that „Democracy and Rights" may create „affiliates of the society in various districts of Tashkent without mentioning other territories […]".

2.12 The court also said it had taken „into account" the fact that the author had „partially admit[ted] the correctness of comments made on the statutes" by the officials who had written the first denial letter and it added that „Democracy and Rights" had „submitted a repeated application". Finally, the court did not respond to the author's argument that the failure to register „Democracy and Rights" violated article 22 of the Covenant. The author notes that, indeed, no other court, in any subsequent proceeding, responded to his argument on this score.

2.13 On an unspecified date, the author appealed the decision of the Inter-District Court to the Judicial Chamber for Civil Cases of the Tashkent City Court (the Tashkent City Court). On 30 March 2004, the Tashkent City Court upheld the decision of the first instance court, effectively repeating it. This court too noted that the author had „partially

acknowledge[d]" the correctness of the MoJ"s view of the statutes. The court noted that the author"s second application for registration had been rejected, and it observed that he was „eligible to file a complaint to court with regard to the review of the decision upon new circumstances of the case".

2.14 On 12 April 2004, the author appealed to the Supreme Court for supervisory review of the decisions of the Inter-District and Tashkent City Courts. On 20 April 2004, the Supreme Court forwarded this appeal to the Chair of the Tashkent City Court. The latter court rendered its decision on 26 April 2004, holding that „the court decisions on the case [were] justified and [they did] not see grounds to file a protest against the decisions". The court repeated its earlier remark that the author had agreed that the initial application had had „shortcomings", and observed that he was free to submit yet another application for registration „provided [the application] is brought in compliance with norms of the effective legislation".

2.15 On 3 September 2004, the author again applied to the Supreme Court for supervisory review of the decisions of the Inter-District and Tashkent City Courts. Once again, however, the Supreme Court forwarded the complaint back to the Tashkent City Court, which responded on 11 November 2004, in full, as follows: „Your complaint sent by the Supreme Court has been examined. Be notified that you were given a detailed response to the complaint of similar contents [on] 26 April 2004". At this point, and in view of the fact that the Supreme Court had twice declined to consider his application for supervisory review, the author concluded that further attempts to obtain a thorough review of the earlier proceedings were futile, and he pursued no further legal action.

Second registration application

2.16 On 27 December 2003, the author submitted a second „corrected registration application to the MoJ, with three „technical" adjustments, and with no other changes. He included in the application a detailed argument refuting the first denial letter"s assertions that the initial application"s „substantive defects" were defective in law.

2.17 On 1 March 2004, the MoJ responded with a letter leaving the application, again, „without consideration". After remarking generally that „[t]he shortcomings indicated in the [first denial letter] have not been rectified in full", the letter listed three specific „shortcomings": (1) the „existence of branches" in regions other than Tashkent had not been demonstrated; (2) paragraph 1.1 of the statutes, providing that „Democracy and Rights" would act in the territory of the Republic of Uzbekistan, „contradict[ed]" paragraph 4.1, providing that „Democracy and Rights" may create „affiliates of the society in various districts of Tashkent without mentioning other territories", and was in violation of article 21 of the NGO Law; and (3) the „Human Rights Protection Ministry", mentioned in part 3 of the statutes, did not exist.

2.18 The author did not try for a third time to obtain registration for „Democracy and Rights", as he believes that such effort would be doomed to fail and, despite the fact that „Democracy and Rights" failed in its attempts to obtain registration as a national NGO, the author and approximately six other members of „Democracy and Rights" have continued to engage in many of the activities envisaged in the statutes. They do so even though engaging in such activities as an unregistered group puts them at risk of criminal and administrative liability. The author submits that a failure to register as an NGO while carrying out as a group activities falling under the definition of article 2 of the NGO Law results in potential legal liability for NGO members. For example, article 37 of the NGO Law provides that persons responsible for violation of the NGO Law will be „liable in accordance with the law". Moreover, article 216 of the Criminal Code prohibits „active participation in the activities [of illegal public associations]" – and any „public association" engaged in activities without registration is illegal. Penalties include imprisonment for up to five years,

„arrest up to six months", or fines as high as 50 to 100 minimum monthly salaries. A set of provisions adopted in 2005 increased the maximum amount of certain of the above-mentioned administrative fines to 150 minimum salaries and created, among other new offences, one of „soliciting of participation in the activity of illegal NGOs, movements, and sects".[4]

Freedom of information request

2.19 Believing that he would find solid evidence that the vast proportion of local NGOs that proposed to engage in human rights activities had been denied the right to register, the author submitted a freedom of information request to the MoJ on 1 August 2005, pursuant to his right under the Law „On Principles and Guarantees for Freedom of Information". In this request, the author asked for access to records indicating the names of all NGOs that had submitted applications for registration to the MoJ, along with the names and contact details of all NGOs whose applications had been denied and the reasons for their denials. Additionally, he requested a copy of the „unified state register containing the names and spheres of activities of all registered NGOs".

2.20 According to article 9 of the Law „On Principles and Guarantees for Freedom of Information", the MoJ was required to respond to the request in 30 days. In fact, however, it only responded in a letter dated 14 October 2005 (more than a month late), but date stamped 25 November 2005 (nearly three months late). In that letter, the MoJ indicated that the author could obtain the information he requested from the Ministry's Department of Public Associations and Religious Organisations. Shortly thereafter, the author contacted the Head of that Department, requesting an appointment to come in to access the materials he had requested. He was told by the Head that he had no time for such requests, and that the author could not come in to examine the materials. At that point, the author concluded that the MoJ had no intention of granting him access to the materials, and that it would be pointless to litigate the matter. Accordingly, he abandoned his efforts in this regard.

The requirement to exhaust all available domestic remedies

2.21 With reference to the facts described above, the author argues that all available domestic remedies have been exhausted and that further attempts to exhaust domestic remedies would have been futile. The author submits that the second registration application did not constitute an admission that the first application had been illegal; and even if it did, this would not vitiate the argument of the communication. While believing that the first application complied fully with applicable law, the author made certain trivial adjustments to the materials before submitting them a second time, simply to show good faith in the application process in the hope of achieving the registration of „Democracy and Rights".

2.22 The author argues that, even if the Committee takes the second application, with its correction of a few technical points, as an acknowledgement of certain domestic legal flaws in the first application, this acknowledgement should in no way vitiate his claim that certain of his rights under the Covenant were violated by the denial of the first application. As the communication shows, it is the application of the registration regime itself to the first request for registration of „Democracy and Rights" – regardless of whether that request had been „legitimate" under local law – that resulted in a violation of the author's Covenant rights.

[4] Article 202 of the Code of Administrative Liability, Law „On the introduction of amendments to the Criminal Code and Code of Administrative Liability", signed into law by the President on 28 December 2005.

2.23 The author states that „Democracy and Rights" wished to disseminate information on human rights widely throughout the country, but would collect the information only in the capital. It could not afford to have regional offices, and in any event did not need to have any for these purposes. Nevertheless, the letter returning the second application reiterated the charge made in the return „without consideration" of the first application, that the author had failed to show that „Democracy and Rights" had presence in all regions of the country. He recalls that he had argued before the domestic courts with respect to the first application, that the requirement of regional presence had no basis in domestic law, and was in direct violation of articles 22 and 19 of the Covenant. However, those arguments were rejected by both the Inter-District Court and the Tashkent City Court. The Supreme Court effectively affirmed these findings. The author argues, therefore, that if he had challenged the second return „without consideration", the result would have been exactly the same.

2.24 The author refers to the Committee's jurisprudence, affirming that the domestic remedies rule does not require resort to appeals that objectively have no prospect of success[5] and that a prior decision on a point of law against the position of a complainant renders the submission by the complainant of the same claim futile.[6] He submits, therefore, that an attempt to litigate the second registration denial would have been futile in view of the fact that he had already fully litigated – and lost – the propriety of requiring a presence in all regions as a condition of being registered as a national NGO.

The complaint

The State party's law and practice of NGO registration

3.1 The first of the author's principal claims is that the State party's NGO registration regime is open to great abuse by virtue of the fact that officials are given very broad discretion to deny or to return „without consideration" registration applications. That grant of discretion is not only evident in the open-ended list of documents required for registration, but also, in the vagueness of some of the grounds for *denying* registration applications. The author submits that there are also rules and regulations (for example, providing for the new category of return „without consideration," or requiring a proof of presence in all regions of the country as a condition of obtaining registration as a national NGO) that are without foundation in law and suggest that the regulation process itself imposes virtually no formal restrictions on officials" inclinations to deny registration requests.

3.2 The second of the author's principal claims, made on the basis of interviews conducted by „Article 19" in preparation of this communication with 15 aspirant NGOs that wish to engage in human rights activities, is that the State party has engaged in a pattern and practice of abuse of the registration process, effectively ensuring that the vast majority of those persons wishing to assert their right to associate together in formal groups to monitor and report to the public at large on the human rights situation in their country simply cannot do so. The author claims that, in effect, as his communication and testimonies of the other unsuccessful applicants show, the overbroad grant of discretion to registration officials by the registration regime amounts *in practice* to a grant to them of *unfettered* discretion, which they employ without hesitation, to reject registration applications as and when they like.

[5] Reference is made to communications Nos. 210/1986 and 225/1987, *Pratt and Morgan* v. *Jamaica*, Views adopted on 6 April 1989, paragraph 12.3.

[6] Reference is made to communication No. 550/1993, *Faurisson* v. *France*, Views adopted on 8 November 1996, paragraph 6.1.

3.3 In support of his claims the author submits an in-depth analysis of the State party"s law and practice in relation to NGO registration, copies of the relevant legislation and testimonies of the other NGOs with the detailed and documented description of their unsuccessful efforts to obtain or to retain NGO registration [53-page long initial submission and two large folders with supporting materials].

3.4 The author recognises that the Committee „is not called upon to criticise in the abstract laws enacted by States parties. The task of the Committee under the Optional Protocol is to ascertain whether the conditions of the restrictions imposed on the right to freedom of expression are met in the communications which are brought before it".[7] On the other hand, however, the Committee has not hesitated to remark the *per se* incompatibility of certain laws with the Covenant, and has urged their repeal or amendment in such cases.[8]

Article 22 of the Covenant

3.5 The author claims that the NGO registration regime operated by the State party is in violation of article 22 of the Covenant, both as a general matter and as applied specifically to foreclose the registration of „Democracy and Rights" as a national NGO. He states that the Committee has recognised the critical role of NGOs that are involved in human rights activities.[9] The author adds that the Committee has frequently voiced its concern that NGO registration regimes may impose restrictions on freedom of association that may fail the strict test of justification set out in the Committee"s jurisprudence[10] and case-law of the European Court of Human Rights (ECtHR).[11] He submits that the Committee has expressed its concerns with the Uzbek regime at issue in this communication on two different occasions.[12]

3.6 The author submits that the Committee has made its view very clear that NGO registration regimes that function as *prior authorisation systems*, as the Uzbek regime does, violate article 22 of the Covenant: „The State party should review its legislation and practice in order to enable non-governmental organizations to discharge their functions without impediments which are inconsistent with the provisions of article 22 of the Covenant, *such as prior authorisations* […]."[13] Particularly pertinent to the present communication is the Committee"s awareness that even „innocent-seeming" registration regimes can be operated by officials in such a way as to effectively amount to prior authorisation systems: as the Committee has written, „while legislation governing the incorporation and status of associations is on its face compatible with article 22 … *de facto*

[7] Ibid, at paragraph 9.3.

[8] Reference is made to communication No. 1119/2002, *Lee* v. *Republic of Korea*, Views adopted on 20 July 2005, paragraph 9.

[9] Concluding Observations: Belarus, CCPR/C/79/Add.86, 19/11/97, paragraph 19. See also Concluding Observations: Nigeria, CCPR/C/79/Add.65, 24/07/1996, paragraph 289.

[10] See, supra n.8, *Lee* v. *Republic of Korea*, paragraphs 7.2 – 7.3.

[11] Reference is made to ECtHR 10 July 1998, 57/1997/841/1047, *Sidiropoulos and others* v. *Greece*, paragraph 20.

[12] In 2005, the Committee took note of „the legal provisions [in Uzbek legislation] and their application that restrict the registration of […] public associations", and went on to indicate that such provisions raised concerns, *inter alia*, under article 22 – see, Concluding Observations: Uzbekistan, CCPR/CO/83/UZB, 26/04/2005, paragraph 21. In 2001, it observed that the Uzbek „legal requirement for registration, subject to the fulfilment of certain conditions, provided for in … the Public Associations [Law] … operates as a restriction on the activities of non-governmental organizations" – see, Concluding Observations: Uzbekistan, CCPR/CO/71/UZB, 26/04/2001, paragraph 22.

[13] Concluding Observations: Egypt, CCPR/CO/76/EGY, 28/11/2002, paragraph 21 (emphasis added).

State party practice has restricted the right to freedom of association through a process of prior licensing and control".[14]

a) The author's freedom of association was restricted

3.7 The author refers to the Committee's conclusion in relation to the State party that the „legal provisions that […] *restrict* the registration of […] public associations" pose potential difficulties under, inter alia, article 22 of the Covenant,[15] and argues that there can be no doubt that the refusal to register „Democracy and Rights" as an NGO constituted a restriction on the members' freedom of association, and on the author's right in particular.[16] In view of the fact that engaging in the activities outlined in the statutes of „Democracy and Rights" as an unregistered group puts its members at risk of criminal and administrative liability, the registration regime constituted (and still constitutes) a *particularly severe* restriction on the right of the author, and indeed on the members of any local human rights NGO, to associate.

b) The restriction was not prescribed by law

3.8 The author claims that the return of the registration application of „Democracy and Rights" „without consideration" was not „prescribed by law". As the Committee has made clear, to be prescribed by law, a restriction must not be unduly vague.[17] He submits that in order for a law to satisfy the „prescribed by law" standard, its language must be clear enough that ordinary persons can understand what is required of them and a law that vests effectively unfettered discretion in officials as to its application cannot meet the standard of „prescribed by law".[18] The author states that, while the Committee does not have a considerable article 22 jurisprudence with respect to the granting of discretion to officials, it has had occasion to remark on such objectionable grants in the closely-related area of freedom of expression.[19] Specifically, it has expressed its concern that *registration* or *licensing regimes* (for the media) that vest too much discretion in officials to deny or revoke registrations or licenses may be in violation of article 19 of the Covenant.[20] The author adds that, as the pattern and practice of abuse of the Uzbek registration system shows, it is simply impossible for anyone at all to know what must be contained in a registration application to ensure its acceptance by the MoJ.

3.9 The author submits that the reasons employed to deny the registration application of „Democracy and Rights" were not reasonably foreseeable[21] (see, paragraphs 2.7 and 2.9 above). In particular, it was unforeseeable that „Democracy and Rights" would have to show *physical presence* in all the regions, when the applicable legislation only contemplates, for national NGOs, that their activities (for instance, the dissemination of information) might implicate many regions. Again, it could not have been foreseen that the human rights activities that „Democracy and Rights" proposed to engage in could not be included in its statutes, because the first denial letter did not specify which activities by which state organs might have clashed with those proposed activities.

[14] Concluding Observations: Lebanon, CCPR/CO/79/Add.78, 01/04/1997, paragraph 27 (emphasis added).
[15] See, supra n.12, CCPR/CO/71/UZB, paragraph 21 (emphasis added).
[16] See also supra n.11, *Sidiropoulos and others* v. *Greece*, paragraph 31.
[17] Reference is made by analogy to General Comment No. 27: Freedom of movement (Article 12), HRI/GEN/1/Rev.9 (Vol. I) at p. 225, paragraph 13.
[18] Ibid.
[19] Concluding Observations: Lesotho, CCPR/C/79/Add.106, 08/04/1999, paragraph 23.
[20] Ibid.
[21] Reference is made to ECtHR 14 March 2002, 26229/95, *Gawęda* v. *Poland*.

3.10 The author requests the Committee to conclude that the employment of unfettered discretion by the MoJ officials in their return „without consideration" of the registration application of „Democracy and Rights" was not prescribed by law. The author also urges the Committee to consider holding more generally that *any* grant of overbroad discretion to officials to grant or deny registration requests by NGOs is in violation of the „prescribed by law" requirement of article 22 of the Covenant, no matter how benign the registration regime would appear to be. Should the Committee, however, decline to decide the issue as broadly as this, the author urges it to find (in addition to finding that the denial of the registration application of „Democracy and Rights" in particular was not prescribed by law), that virtually every rejection of an NGO registration application by Uzbek officials has the high probability of not being prescribed by law, *and thus that the Uzbek registration regime itself is not prescribed by law*.

c) The denial of registration application was not in pursuit of a legitimate aim

3.11 The author submits that nothing in the applicable legislation, and equally, nothing in any of the court decisions relating to „Democracy and Rights" gives any hint as to what aim the registration regime is supposed to be in service of. He adds that, even if the Committee were prepared to accept that *some* kind of NGO regime of general application could be in service of some aim deemed legitimate by article 22, it is manifest that a great many of the actual requirements in the Uzbek registration regime are not, and cannot be, in service of any such legitimate aim.

3.12 The author recalls that „Democracy and Rights" was told that it could not engage in the human rights activities that it proposed, because these were within the remit of certain (unspecified) state entities. He argues that the Committee has foreclosed this argument by explaining that „the free functioning of non-governmental organizations is essential for protection of human rights and dissemination of information in regard to human rights among the people […]," and for this reason, State Parties must provide for the „establishment and free operation [of such NGOs] […] in accordance with article 22 of the Covenant."[22] The author states that neither public morals nor public health could be damaged when human rights abuses are brought to the light of day by NGOs. He, therefore, requests the Committee to conclude that this aspect of the Uzbek regime, which effectively prohibits any human rights activities by NGOs where such activities might also be engaged in by the State, violates article 22 of the Covenant, and that the return „without consideration" of the registration application of „Democracy and Rights", in part because of its proposed human rights activities, violated the author's rights under article 22.

3.13 The author states that it is impossible to see how a requirement to have a presence in every region as a condition of registration as a national NGO, which goes far beyond the requirement merely that an NGO identify itself, could ever be said to be in service of any aim deemed legitimate under article 22, paragraph 2, of the Covenant. Accordingly, he requests the Committee to find that the requirement of presence in all regions is *per se* in violation of article 22 of the Covenant in failing to pursue any legitimate aim, and that a violation of article 22 occurred in the application of the State party's regime to deny registration to „Democracy and Rights" based on its failure to have shown a presence in all regions.

3.14 The author also requests the Committee to conclude that the operation of the entire Uzbek registration system, as applied to local human rights NGOs generally and to „Democracy and Rights" in particular, is in the service of a single *illegitimate* aim and is in

[22] See, supra n.9 (Belarus), paragraph 19.

violation of article 22 of the Covenant, as it prevents the registration of human rights NGOs.

d) The denial of the registration application was not necessary to achieve any legitimate purpose

3.15 The author refers to the Committee"s jurisprudence[23] and submits that the State party has the burden of showing that a restriction on the freedom to associate is „necessary to avert a real, and not only a hypothetical danger to [one or more of the legitimate aims set forth in article 22, paragraph 2, or to the democratic order itself] and that less intrusive measures would be insufficient to achieve this purpose". He submits that the Uzbek registration regime cannot satisfy this burden.

Article 19 of the Covenant

3.16 The author claims that he and the other members of „Democracy and Rights", wished to use their combined efforts to gather information about the human rights situation in Uzbekistan, and then to impart that information to the public.[24] The return „without consideration" of the registration application effectively prohibited them from engaging in these core freedom of expression activities and amounted to a violation of the author"s rights under article 19 of the Covenant. With reference to the Committee"s jurisprudence,[25] the author argues that his rights under article 19 of the Covenant have been violated by the State party, since the return „without consideration" of the registration application of „Democracy and Rights" was not provided by law, did not pursue any legitimate article 19 aim and was not in any event necessary in the pursuit of any such aim.

a) The author"s freedom of expression was restricted

3.17 The author submits that, while the return „without consideration" of the registration application of „Democracy and Rights" did not directly affect the rights of any of the members to gather and disseminate this information *on their own*, some communication efforts are much more effective, and much more correspond to the rightful wishes of the communicators, when they are done as a group rather than individually. He notes the Committee"s view that only individuals, and not associations (including NGOs) can submit communications under the Optional Protocol.[26] He submits, however, that this does not constitute an impediment in the present communication, since the Committee has already explicitly recognized that the freedom of expression rights of individuals were implicated in their efforts to communicate through groups.[27] The author claims, therefore, that his efforts to cooperate with others to gather and disseminate human rights information, through attempting to associate with them in „Democracy and Rights", directly implicated his right to freedom of expression protected under article 19 of the Covenant. Accordingly, the

[23] See, supra n.8, *Lee* v. *Republic of Korea*, paragraph 7.2.

[24] Reference is made to communication No. 780/1997, *Laptsevich* v. *Belarus*, Views adopted on 20 March 2000, paragraph 8.1.

[25] Ibid, at paragraph 8.2. Reference is also made to communication No. 1022/2001, *Velichkin* v. *Belarus*, Views adopted on 20 October 2005, paragraph 7.3.

[26] Reference is made to communication No. 104/1981, *J.R.T. and the W.G. Party* v. *Canada*, Inadmissibility decision adopted on 6 April 1983, paragraph 8(a).

[27] Reference is made to communication No. 1249/2004, *Sister Immaculate Joseph and 80 Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka* v. *Sri Lanka*, Views adopted on 21 October 2005, paragraph 7.2 and supra n.12, CCPR/CO/71/UZB, paragraph 21. See also, supra n.11, *Sidiropoulos and others* v. *Greece*, paragraph 52.

refusal by the State party to register „Democracy and Rights" constituted a restriction of that right.

b) The restriction was not provided by law

3.18 The author submits that the pattern and practice of abuse of the NGO registration system shows that he had no chance of knowing what he needed to do to succeed in registering „Democracy and Rights"; equally, that pattern and practice proves that officials do have unfettered discretion under the Uzbek registration regime to arbitrarily reject registration applications, and that „Democracy and Rights" was a victim of that abusive discretion. Accordingly, the authors requests the Committee to conclude that the return „without consideration" of his registration application was not provided by law for the purposes of article 19.

c) The restriction was not in pursuit of any legitimate aim

3.19 The author requests the Committee to find, based on the pattern and practice of abuse of the State party"s NGO registration system that the return „without consideration" of the registration application of „Democracy and Rights" was not in pursuit of any aim deemed legitimate under article 19.

d) The restriction was not necessary for the pursuit of any legitimate aim

3.20 As to the alleged substantive „defects" in the registration application, the author submits that the wholesale restriction of his right to communicate on human rights issues through „Democracy and Rights" cannot have been necessary in the pursuit of any governmental aim to promote or protect human rights due to its disproportionality. Moreover, the State party"s authorities have failed to provide a detailed and specific justification, required under article 19 of the Covenant, for prohibiting communication activity of „Democracy and Rights" relating to human rights. As to the alleged technical „defects", the author refers to the Committee jurisprudence[28] and submits that the return „without consideration" of the registration application of „Democracy and Rights" was arbitrary and, therefore, not necessary in the pursuit of an article 19 legitimate aim.

State party's observations on admissibility and merits

4.1 On 11 October 2006, the State party challenged the admissibility of the communication, without, however, advancing any specific arguments under articles 1 to 5, paragraph 2, of the Optional Protocol.

4.2 On the merits, the State party reiterates the facts of the case summarised in paragraphs 2.3, 2.9, 2.11 and 2.13 above and adds that the following defects have been identified during the examination of the statutory documents submitted by „Democracy and Rights": (1) they contain no indication of the Board"s term of office; (2) the proposed business activities violate the Public Associations Law, the NGO Law and paragraph 1.1 of its own statutes; (3) the submitted list of the organisation"s initial members had not been certified by a notary and omitted the initial members" dates of birth, thus contravening the requirements of the Public Association Registration Rules; (4) according to paragraph 1.1 of the statutes, „Democracy and Rights" functions in the regions of Uzbekistan without providing the documents required of the regional branches of public associations, thus contravening the requirements of the Public Association Registration Rules; (5) paragraph 1.1 contradicts paragraph 4.1 of the statutes, as the letter signed by the author on 10

[28] See, *inter alia*, communication No. 633/1995, *Gauthier v. Canada*, Views adopted on 7 April 1999.

December 2003 states that „Democracy and Rights" does not have local branches. According to article 21 of the NGO Law, a public association of this type cannot be granted a national status; (6) paragraph 8.5 of the statutes does not comply with articles 53 – 56 of the Civil Code and article 36 of the NGO Law. On 8 October 2003, the MoJ informed the author that his registration application was left without consideration and advised of his right to re-apply once the defects have been corrected.

4.3 The State party submits that the author requested the Inter-District Court to revoke the MoJ"s decision to leave the registration application of „Democracy and Rights" without consideration on the ground that it had reached him as late as 13 October 2003 and, therefore, exceeded the deadline for consideration of the application. The State party refers to the decision of the Inter-District Court of 12 February 2004, in which it was explained that under article 11 of the Public Associations Law and rule 3 of the Public Association Registration Rules, the application to register the statutes of a public association was to be considered within two months of its receipt. The registration body was to take one of the following decisions, depending on the results of its consideration: to grant the registration, to deny the registration or to leave the application without consideration.

4.4 The State party submits that, as transpires from the materials of the respective civil case, the draft statutes contained a number of provisions that did not comply with existing legislation, namely: paragraphs 1.1 and 4.1 of the statutes did not contain a clear description of the legal status of the association and did not clearly define its aims, furthermore, paragraph 1.3 used the term the „courts of arbitration" which was not provided for in the Uzbek legislation.

4.5 The State party notes that by the time the Inter-District Court rendered its decision, the author had submitted a second registration application, without, however, having corrected the above-mentioned defects. As a result, this application was also left without consideration by the decision of the Board of the MoJ of 27 February 2004.

4.6 The State party states that, according to the author"s explanation provided at the time of consideration of his appeal by the Tashkent City Court, he disagreed with the decision of the MoJ on his second registration application. These new claims, however, could not be considered by the Tashkent City Court, since they have not been raised before the first instance court.[29] The Tashkent City Court upheld the decision of the first instance court and justifiably declined the author"s appeal. At the same time, he was explained his right to petition the court for review of the court decisions that already became executory, in light of the newly-discovered circumstances.

4.7 For the above reasons and further to the provisions of the Optional Protocol, the State party deems it inadmissible for the Committee to consider this communication.

Author's comments on the State party's observations

5.1 On 11 December 2006, the author submits his comments on the State party"s observations. He states that there are possibly two arguments that the State party might be making against his communication.

5.2 First, the author submits that it is possible that the State party is saying that he himself had argued before the Tashkent City Court that the return of the *second* registration application was improper. The State party would appear to be arguing on this point that since the author had not challenged the return of the *second* application in the first instance

[29] Reference is made to paragraph 22 of the Plenum of the Supreme Court „On the Procedures for Dealing with Appeals in Civil Cases".

court, the challenge was not properly before the court of appeal. Consequently, the return of that application cannot be before the Committee, since there has not been an exhaustion of domestic remedies as to it. Second, he submits that it is possible that the State party is arguing that the decision of the Tashkent City Court in relation to the *first* registration application was correct as a matter of domestic law. Since the decision of the first instance court was „justified", i.e. correct as a matter of domestic law, the Committee should decline to consider the communication.

5.3 As to the first argument raised by the State party, the author recalls that before the domestic courts and in the context of the present communication he challenged the first return „without consideration" only and that all available remedies have been exhausted in relation to his first registration application. Furthermore, he argued throughout the domestic court proceedings that the effective denial of the *first* registration application based on *any* of the alleged „defects", *including the ones technically defective under the domestic Rules*, was in violation of the Covenant. Even though the return of the *second* registration application is not before the Committee, the author notes that it would have been futile for him to challenge that return in court, because two of the three reasons given by the State party's authorities for denying the *second* application were exactly the same as the reasons *approved* by both the Inter-District Court and the Tashkent City Court (and not objected to by the Supreme Court) as correct bases for returning the *first* application.

5.4 As to the second argument raised by the State party, the author submits that even if the return of the *first* registration application was proper from the point of view of Uzbek registration law, that return was not in compliance with *the Covenant*. He claims that the restriction of his rights of association and expression, resulting from the return of the *first* registration application, was illegal under the Covenant, because: (1) it was not „prescribed by law" as understood under article 22, paragraph 2, of the Covenant; (2) it was not „provided by law" as understood under article 19, paragraph 3; (3) it pursued no aim deemed legitimate under either article 22, paragraph 2, or article 19, paragraph 3; and (4) it was not „necessary" for the protection of a legitimate aim, as required under both article 22, paragraph 2, or article 19, paragraph 3. The author notes that the State party's observations are silent as to *any* of the communication's substantive arguments on these matters and fail to make any substantive argument to show that the return of the *first* registration application was proper under the Law of the Covenant.

Further submissions from the author

6. On 26 February 2007, the author submits a comparison between the facts and decisions of the Committee in *Zvozskov et al.* v. *Belarus*[30] and *Korneenko at al.* v. *Belarus*[31] and the facts and arguments presented by him in the present communication. He argues that the Belarusian registration regime operates very similarly to the Uzbek regime which he is challenging in his communication. The author submits that the facts of the present communication compel exactly the same conclusion in relation to the „necessity" test as in the two above-mentioned communications, i.e. that the denial of the registration application of „Democracy and Rights" violated article 22 in that it was not necessary in the service of any aim deemed legitimate under article 22, paragraph 2, of the Covenant. At the same time, the author requests the Committee to consider expanding its jurisprudence on abusive NGO registration regimes beyond these two decisions. In particular, given the egregious and systematic abuse of the Uzbek registration system by Uzbek officials, the Committee should decide, based on the arguments in the present communication, that (1) the actual

[30] Communication No. 1039/2001, *Zvozskov et al.* v. *Belarus*, Views adopted on 17 October 2006.
[31] Communication No. 1274/2004, *Korneenko et al.* v. *Belarus*, Views adopted on 31 October 2006.

operation of the Uzbek registration system as applied to human rights NGOs *is not prescribed by law*, and (2) that the system *pursues no aim deemed legitimate* under article 22, paragraph 2.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of Procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes that the State party has challenged the admissibility of the communication, without, however, advancing any specific arguments under articles 1 to 5, paragraph 2, of the Optional Protocol. It also notes the author‟s affirmation that the present communication challenges the first return „without consideration‟ only. In the absence of any objection by the State party in relation to the exhaustion of domestic remedies by the author on his first registration application for „Democracy and Rights‟, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met as far as this part of the communication is concerned.

7.4 The Committee considers, therefore, that the author has sufficiently substantiated his claims under article 19 and article 22 of the Covenant, for purposes of admissibility, and proceeds to their examination on the merits.

Consideration of the merits

8.1 The Human Rights Committee has considered the communication in light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol.

8.2 The key issue before the Committee is whether the refusal of the State party‟s authorities to register „Democracy and Rights‟ amounts to a restriction of the author‟s right to freedom of association, and whether such restriction was justified. The Committee notes that domestic law outlaws the operation of unregistered public associations on the territory of Uzbekistan and establishes criminal and administrative liability for the individual members of such unregistered associations who carry out the activities envisaged in their respective statutes. In this regard, the Committee observes that the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association, and the denial of state registration of an association must satisfy the requirements of paragraph 2 of that provision.

8.3 In the present case, the decision of the MoJ to return the author‟s first registration application „without consideration‟, as upheld by the Inter-District Court and the Tashkent City Court, is based on the perceived non-compliance of the application materials of „Democracy and Rights with two substantive requirements of the State party‟s domestic law that: (1) „Democracy and Rights‟ not engage in any human rights activities that any official body is engaged in, and (2) it be physically present in every region of Uzbekistan, as well as technical „defects‟ in the association‟s application materials. Given the fact that even a single „shortcoming‟ would suffice, according to the State party‟s authorities, to justify the return of a registration application „without consideration‟, these substantive and

technical requirements constitute *de facto* restrictions and must be assessed in the light of the consequences which arise for the author and „Democracy and Rights".

8.4 The Committee observes that, in accordance with article 22, paragraph 2, any restriction on the right to freedom of association must cumulatively meet the following conditions: (a) it must be provided by law; (b) may only be imposed for one of the purposes set out in paragraph 2; and (c) must be „necessary in a democratic society" for achieving one of these purposes. The reference to „democratic society" in the context of article 22 indicates, in the Committee's opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably viewed by the government or the majority of the population, is a cornerstone of a democratic society.[32]

8.5 As to the substantive requirements, the Committee firstly notes that the State party's authorities did not specify which activities by which state organs might have clashed with the proposed statutory activities of „Democracy and Rights" in the field of human rights. Secondly, it notes that the author and the State party disagree on whether domestic law indeed requires showing of physical presence in every region of Uzbekistan in order for a public association to be granted a national status, authorising it to disseminate information in all parts of the country. The Committee considers that even if these and other restrictions were precise and predictable and were indeed prescribed by law, the State party has not advanced any argument as to why such restrictions would be *necessary*, for purposes of article 22, paragraph 2, to condition the registration of an association on a limitation of a scope of its human rights activities to the undefined issues not covered by state organs or on the existence of regional branches of „Democracy and Rights".

8.6 As to the technical requirements, the Committee notes that the parties disagree over the interpretation of domestic law and the State party's failure to advance arguments as to which of the numerous „defects" in the association's application materials triggers the application of the restrictions spelled out in article 22, paragraph 2, of the Covenant. Even if the application materials of „Democracy and Rights" did not fully comply with the requirements of domestic law, the reaction of the State party's authorities in denying the registration of the association was disproportionate.

8.7 Taking into account the severe consequences of the denial of state registration of „Democracy and Rights" for the exercise of the author's right to freedom of association, as well as the unlawfulness of the operation of unregistered associations in Uzbekistan, the Committee concludes that such denial does not meet the requirements of article 22, paragraph 2, of the Covenant. The author's rights under article 22, paragraph 1, have thus been violated.

8.8 With regard to article 19 of the Covenant, the author claims in great detail that the return „without consideration" of the registration application effectively prohibited the author and other members of „Democracy and Rights" from engaging in core freedom of expression activities, i.e. gathering information about the human rights situation in Uzbekistan, and then imparting that information to the public. He argues that the denial of registration amounted to a violation of his rights under article 19, in its failure to be „provided by law" and to pursue any legitimate aim, as understood under article 19, paragraph 3. In this regard, the Committee recalls its jurisprudence[33] that the freedom of expression rights of individuals are implicated in their efforts to communicate through associations and are thus protected by article 19. The Committee observes that article 19

[32] See, supra n. 31, *Korneenko et al.* v. *Belarus*, at paragraph 7.3. See also, supra n.30, *Zvozskov et al.* v. *Belarus*, at paragraph 7.2.

[33] See, *Sister Immaculate Joseph and 80 Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka* v. *Sri Lanka*, supra n.27, paragraph 7.2.

allows restrictions only as provided by law and necessary (a) for respect of the rights and reputation of others; and (b) for the protection of national security or public order (ordre public), or of public health or morals. It recalls that the right to freedom of expression is of paramount importance in any society, and any restrictions to its exercise must meet a strict test of justification.[34]

8.9 In the present case, the Committee is of the opinion that the application of the procedure of registration of „Democracy and Rights" did not allow the author to practise his right to freedom of expression, in particular, to seek, receive and impart information and ideas, as defined in article 19, paragraph 2. The Committee notes that the State party has not made any attempt to address the author's specific claims nor has it advanced arguments as to the compatibility of the requirements, which are *de facto* restrictions on the right to freedom of expression, which are applicable to the author's case, with any of the criteria listed in article 19, paragraph 3, of the Covenant.[35] The Committee therefore considers that the return „without consideration" of the registration application of „Democracy and Rights" also resulted in a violation of the author's right under article 22, paragraph 1, read together with article 19, paragraph 2, of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of the author's rights under article 22, paragraph 1, read alone and in conjunction with article 19, paragraph 2, of the Covenant.

10. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including compensation amounting to a sum not less that the present value of the expenses incurred by him in relation to the registration application of „Democracy and Rights" as a national NGO and any legal costs paid by him. It should reconsider the author's registration application in light of article 19 and article 22, and ensure that the laws and practices that regulate the NGO registration and restrictions imposed are compatible with the Covenant. The State party is also under an obligation to prevent similar violations in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests the State party to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

[34] See, *inter alia*, communication No. 574/1994, *Kim* v. *the Republic of Korea*, Views adopted on 3 November 1998 and communication No. 628/1995, *Park* v. *the Republic of Korea*, Views adopted on 20 October 1998.

[35] See, communication No. 1334/2004, *Mavlonov and Sa'di* v. *Uzbekistan*, Views adopted on 19 March 2009, paragraph 8.4.

Appendix

Individual opinion of Committee member Mr. Fabián Salvioli

1. I concur with the views of the Human Rights Committee in finding violations of article 22, paragraph 1, read alone and in conjunction with article 19, paragraph 2, of the International Covenant on Civil and Political Rights in the case of *Nikolai Kungurov v. Uzbekistan* (communication No. 1478/2006).

2. I nonetheless consider, for reasons explained below, that in this case the Committee ought to have concluded that the State party is also in violation of article 2, paragraph 2, of the Covenant and, in the section on reparations, should have urged the State party to amend its legislation to bring it into line with the Covenant.

3. Ever since I became a member of the Committee, I have maintained that possible violations of article 2, paragraph 2, of the Covenant can be found in the context of an individual complaint, in accordance with current standards governing the international responsibility of States in respect of human rights. I have no reason to depart from the observations I made in paragraphs 6 to 11 of the individual opinion which I formulated in communication No. 1406/2005 regarding the possibility of incurring international responsibility through legislative acts, the Committee‟s capacity to apply article 2, paragraph 2, in the context of individual complaints, the interpretative criteria which should guide the Committee‟s work when finding and considering possible violations and, lastly, the consequences in terms of reparation. I would draw attention to these guiding principles.[1]

4. In the present case, we have an instance of the application, to the detriment of Mr. Nikolai Kungurov, of legislation that is clearly incompatible with the Covenant. As indicated in paragraph 3.5 of the Views of the Committee as set forth in the communication: "*the author claims that the NGO registration regime operated by the State party is in violation of article 22 of the Covenant, both as a general matter and as applied specifically*". For this reason, it is also stated, in paragraph 1.1, that the author "*claims to be a victim of violations by Uzbekistan of his rights under article 19 and article 22, read in conjunction with article 2, of the International Covenant on Civil and Political Rights*" (emphasis added).

5. The finding of a violation of article 2, paragraph 2, in a specific case has practical consequences in terms of reparations, especially as regards the prevention of any recurrence. The fact that the present case concerns a victim of the application of a legal standard incompatible with the Covenant vitiates any interpretation relating to a possible ruling *in abstracto* by the Human Rights Committee.

6. The Committee is not a court, but it is responsible for monitoring implementation of the Covenant. Once the Covenant is ratified, all branches of government (executive, legislative and judicial) must review their compliance with the Covenant in order to ensure that the State does not incur international responsibility by violating the rights of persons subject to its jurisdiction through the application of domestic legislation that is clearly incompatible with the Covenant.

7. The Committee has a duty to apply the law but does not necessarily have to take the parties‟ legal observations into account. Irrespective of this fact, in the present case the

[1] See the partially dissenting opinion of Mr. Fabián Salvioli in the case of *Anura Weerawansa* v. *Sri Lanka*, communication No. 1406/2005.

author invoked possible violations of article 2 of the Covenant, read in conjunction with article 22, and challenged the legal regime applied per se. However, although the allegations made by the victim on this point are very clear, the Committee remains inexplicably silent on the matter. The legal provisions contained in both the Public Association Registration Rules and the Act on Non-Governmental Non-Profit Organizations are in outright contradiction to the Covenant in that they grant the State authorities decision-making powers which, as demonstrated in the case under review, are entirely arbitrary.

8. Because the Committee did not express a view on the possible violation of article 2 of the Covenant, the reparation indicated in the communication is insufficient. Ensuring that "the laws and practices that regulate … NGO registration and restrictions … are compatible with the Covenant" is important, but it does not resolve the problem that arose in the present case. If, as the Committee affirmed, "*the State party is also under an obligation to prevent similar violations in the future*", an obligation to amend its legislation on NGO registration to bring it into line with the Covenant provisions should also be established, and on the merits of the case a violation of article 2 of the International Covenant on Civil and Political Rights should be found.

[*Signed*] Fabián Salvioli

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]