



Human Rights Committee

Communication No. 1500/2006

**Decision adopted by the Committee at its 106th session (15 October–
2 November 2012)**

<i>Submitted by:</i>	M.N. et al. (not represented by counsel)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Tajikistan
<i>Date of communication:</i>	18 November 2005 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 4 October 2006 (not issued in document form)
<i>Date of adoption of decision:</i>	29 October 2012
<i>Subject matter:</i>	Persecution and discrimination on grounds of political opinion; freedom of opinion and freedom of association; right to be elected
<i>Procedural issue:</i>	Insufficient substantiation of claims
<i>Substantive issues:</i>	Recognition everywhere as a person before law; unlawful interference with privacy and family life; freedom of opinion; freedom of association; right to be elected; prohibition of discrimination
<i>Articles of the Covenant:</i>	5, 16, 17, 19, 22, 25 (b) and 26
<i>Article of the Optional Protocol:</i>	2

Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (106th session)

concerning

Communication No. 1500/2006*

Submitted by: M.N. et al. (not represented by counsel)

Alleged victims: The authors

State party: Tajikistan

Date of communication: 18 November 2005 (initial submission)

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

Meeting on 29 October 2012,

Adopts the following:

Decision on admissibility

1. The authors of the communication, dated 18 November 2005 (initial submission), are four Tajik nationals: M.N., S.K., A.U. and S.S. They claim to be victims of a violation by Tajikistan¹ of their rights under articles 5, 16, 17, 19, 22, 25 (b), and 26 of the International Covenant on Civil and Political Rights. The authors are not represented by counsel.

Factual background

2.1 The authors are members of the Socialist Party of Tajikistan (SPT): Mr. N. presents himself as the president of the SPT; Mr. K., as the son of the former president of the party (killed in March 1999); Mr. U., as the Khatlonsk regional representative of the party; and Ms. S., as the deputy president of the party. They claim to be victims of constant persecution on political grounds by the regime in place in Tajikistan. The SPT was created on 15 June 1996 in Khudzhand city. M.K. was elected as the first president of the party, but was subsequently illegally removed from her position with the participation of the State apparatus. Then Sa.K. (father of Mr. K.) was elected as the party's president. He was murdered, allegedly in a "terrorist attack", on 30 March 1999, while preparing for the presidential election of 1999. After that, Mr. K. became the acting president of the party,

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev and Mr. Krister Thelin.

¹ The Optional Protocol entered into force for Tajikistan on 4 April 1999.

and was also subjected to persecution as a result. At the time of submission of the communication, the other three authors had assumed the party's leadership. According to the authors, they are all persecuted and intimidated by the authorities.

2.2 The authors affirm that the SPT was created as an opposition party headed by the former Chairman of the Majlisi Oli (Parliament), Mr. Sa.K., who was a prominent opposition leader and one of the activists for the restoration of the constitutional order in the country after the civil war. Mr. Sa.K. was also one of the prospective candidates for the presidential election of 1999. The authors claim that the authorities did not take any steps to ensure his protection against possible attacks. Furthermore, authorities took measures aimed at preventing the party's participation in the presidential election of 1999, and generating internal destabilization of the party, leading to its dissolution. Following the murder of Mr. Sa.K., the party's leaders and regional representatives appealed to the authorities, requesting them to bring the perpetrators to justice. However, at the time of submission of the communication, those responsible were still at large and no one had been prosecuted for the murder. According to the authors, faced with the authorities' failure to investigate and bring to justice those responsible, more than half of the party's members left the SPT, in fear of political persecution. As a result, the authors claim that the SPT was excluded from participation in the presidential election of 1999 and therefore they are victims of violation of their rights to be elected, together with 500 other members of the leadership of the party.

2.3 The authors further affirm that before and during the parliamentary election of 2000, the party's leadership, as well as the parliamentary candidates, were subjected to pressure by members of the Municipal Council of Dushanbe city and law enforcement authorities. Before the election, Mr. N., who was a Member of Parliament candidate for the single-mandate district No. 2 (Oktyabrsky district² of Dushanbe city), was forced by a representative of the Ministry of Security (now the State National Security Committee (SNSC)) and by the deputy president of the Municipal Council of Oktyabrsky district to withdraw from the election. When he initially refused to withdraw, the SNSC representative threatened to put opium in his pockets, arrest him and have him held at least until the end of the election. Mr. N. thus had no choice but to sign a declaration withdrawing his candidacy.

2.4 Mr. U. was designated as a Member of Parliament candidate for the single-mandate district No. 8. During the preliminary election campaign, he was also subjected to persecution. For instance, in January 2000, when he was on his way home after a meeting with electors, he was attacked by armed men wearing masks. Despite this incident, he did not withdraw his candidature and obtained 58 per cent of the votes in the election. However, the results were falsified and the brother of the then president of the Municipal Council of Lenin district³ was designated as the winner. The same year, Mr. U., while driving his car, was stopped by masked men who threatened him and stole the car. Mr. U. reported this incident to the Department of Internal Affairs of the Lenin district, but nothing was done to investigate the facts.

2.5 Mr. K., who was a Member of Parliament candidate for the single-mandate district No. 13, obtained the majority of votes in the first round of the election (out of four candidates) despite the pressure exerted by certain groups of former Members of Parliament during the election and the manipulation of election results. However, due to ballot fraud, he was not admitted to the second round of the election. Similar abuses occurred in respect to other candidates. Thus, Ms. S., who was designated as a Member of

² Now referred to as Ismoili Somoni district.

³ Now referred to as Rudaki district.

Parliament candidate for a certain district, was unlawfully registered by the Central Commission on Elections and Referenda (hereinafter the Electoral Commission) as a candidate for a different district. According to the authors, 20 Member of Parliament candidates of the SPT were not even registered by the Electoral Commission. Despite this, the representatives of the SPT obtained the vast majority of votes in at least three single-mandate districts. However, as a result of fraud and falsification of votes, the party's representatives were not admitted to the Parliament.

2.6 In relation to the above incidents, and given the unstable and dangerous situation in Tajikistan in 2000, the death threats addressed to the Member of Parliament candidates by armed groups, and the ineffectiveness of any complaints submitted to court at that time, the authors were frightened and decided not to complain. They claim that as a result of the numerous acts of falsification and intimidation, the SPT, which was the second political party in terms of popularity, lost a significant number of its supporters.

2.7 In April 2004, the SPT, together with other parties, entered into a coalition "for honest and transparent elections". Then, the Minister of Justice, Mr. Kh., together with a senior counsellor of the President, one Mr. V., an official from the Ministry of Education, Mr. G., and representatives of several local municipal councils, abusing their authority, started to interfere in the internal affairs of the party. Mr. Kh., in breach of national legislation, provided Mr. G., who was not a member of the SPT, with a copy of the certificate of registration of the SPT authenticated by the Ministry, with Mr. Kh's signature and dated 3 March 1999. The authors claim that in March 1999 the Minister of Justice was another person, not Mr. Kh. Mr. G., using the registration certificate, obtained the letterhead and the seal of the Dushanbe Executive Committee of the SPT. Using the seal, Mr. V. and Mr. G., who had been expelled from the party in March 2000, organized a number of "pseudo"-SPT meetings and even one party congress on 20 June 2004, in spite of the reactions from the elected SPT local representatives.

2.8 In view of the situation, the Executive Committee of the SPT decided to convene an extraordinary congress on 14 August 2004. Despite the difficulties, such as pressure by certain officials of municipal councils to prevent the participation of certain delegates and interference in the work of the congress by a representative of the Ministry of Justice, the congress was a success. Notwithstanding the fact that before the congress pro-Government newspapers and other political party-run newspapers published provocative articles aimed at discrediting Mr. N., he was elected as the president of the SPT for a five-year term. The authors claim that the congress was attended by leaders and representatives of all political parties, international organizations, a representative of the Ministry of Justice and by local and foreign mass media.

2.9 The authors claim that, in accordance with the requirements of the Act on Political Parties, the SPT leaders have sent more than 45 notes to different municipal councils, informing them about decisions taken during party's conferences. However, before the 2005 election for the Majlisi Oli, the Ministry of Justice, by a letter of 16 December 2004, provided the Electoral Commission with the list of all political parties registered with the Ministry of Justice and the names of their leaders. According to the letter, the SPT registered with the Ministry of Justice was the SPT headed by Mr. G. The authors maintain that, ignoring their interest and that of other "genuine" leaders of the SPT,⁴ the Ministry of

⁴ The authors affirm that in May 2002, Mr. U. was elected as SPT representative for Khatlon region. His election took place in the presence of representatives of different political parties, representatives of the Organization for Security and Co-operation in Europe, the press and TV journalists. However, after a letter from the Minister of Justice was sent to the Electoral Commission on 16 December 2004, the Khukumat (Municipal Council) of Khatlon region unlawfully recognized one Mr. S., who has never been an SPT member, as the SPT regional leader.

Justice unlawfully created an “artificial SPT” headed by Mr. G. On 19 December 2004, Mr. G. organized an unlawful party congress in order to elect the party candidates for the parliamentary election.⁵ On 14 January 2005, based on the letter of the Ministry of Justice, this party was further registered by the Electoral Commission for participation in the election of the Majlisi Namoyandagon (House of Representatives) of the Majlisi Oli. As a result, the lawful SPT was de facto barred from participating in the 2005 election.

2.10 The authors claim to have exhausted domestic remedies in connection with the facts they describe. Thus, in relation to the murder of Mr. Sa.K. in an alleged terrorist attack, they state that several petitions (including a petition of the Central Executive Committee of the SPT and a joint petition of Tajik political parties) were submitted to authorities and law enforcement bodies on 31 March 1999, with a request to investigate, prosecute and punish those responsible. All these appeals remain unanswered.

2.11 In relation to intimidation by political opponents, ballot fraud and falsification of votes, the authors submit that, due to the climate of insecurity in Tajikistan in 2000, the threats to Member of Parliament candidates’ lives by armed groups and the ineffectiveness of any complaints to court at that time, they were frightened and decided not to file complaints.

2.12 With regard to the interference in the internal affairs of the party, the authors appealed to several institutions. On 14 May 2004, they addressed a complaint to the head of the Interior Department of the Sino city district in Dushanbe regarding the unlawful use of the seal of the SPT Executive Committee by a non-member of the political party, Mr. G. No response was received. The complaint submitted to the Prosecutor’s Office of Dushanbe city on 1 November 2004 was rejected. On 5 September and 9 December 2004, the authors sent letters to the President of Tajikistan. On 23 October 2004, a complaint was lodged with the General Prosecutor’s Office of Tajikistan. All these complaints remain unanswered. On 13 January 2005, the authors filed another complaint with the General Prosecutor’s Office, which advised them to resort to the courts for consideration of their claims.

2.13 On 23 December 2004, the authors appealed to the Supreme Court, requesting the annulment of the Minister of Justice’s letter of 16 December 2004 (by which the Minister, Mr. Kh., illegally recognized Mr. G. as the president of the SPT) and protection of their constitutionally protected electoral rights. The Supreme Court refused to examine the complaint, indicating that the authors could submit it to the local court. On 4 January 2005, the authors appealed to the Somoni District Court (the party was registered in that district), the Shohmansur District Court (where the Ministry of Justice is located), and the Dushanbe City Court, complaining against the allegedly unlawful letter of the Minister of Justice, and requesting the protection of their constitutional rights. All three courts refused to examine the complaints, claiming that they did not fall under their respective jurisdiction.

2.14 The authors also appealed against the decision of the Electoral Commission of 14 January 2005 regarding the registration of SPT candidates for the election. On an unspecified date, a complaint was lodged with the Supreme Court of Tajikistan, requesting the Court to annul the decision in question and to interrupt the activity of the unlawful,

⁵ Mr. N. claims that the congress was unlawful, for the following reasons: (a) there were only 15 to 20 participants; (b) there was no quorum, therefore the nomination of candidates for the parliamentary election was in breach of the Act on Political Parties and the party’s charter; (c) the representative of the Electoral Commission was not present during the party’s congress; (d) the Electoral Commission registered candidates for the parliamentary election other than the ones nominated by the party’s congress.

“artificially created” Socialist Party of Tajikistan.⁶ On 20 January 2005, the Court rejected the complaint, finding the decision of the Electoral Commission in conformity with national legislation and rejecting the author’s request for its annulment. The Court indicated that, during the proceedings, Mr. Sh., the representative of the Electoral Commission, explained that Mr. G. provided to the Commission the list of SPT candidates for the parliamentary election and all documents required by law for their registration. After the Ministry of Justice confirmed that the SPT was a registered party presided by Mr. G., the Electoral Commission examined the presented materials, in accordance with the electoral legislation, and found no impediments to the registration of SPT election candidates presented by Mr. G. The Commission did not receive any documents for the registration of candidates from the author, Mr. N. The representative of the Ministry of Justice confirmed to the Commission that he was present during the party congress organized by Mr. N., and noticed that half of those present and having the mandate to vote were in reality not members of the SPT. He reported this to Mr. N. and recommended that he resolve all disputes regarding the party leadership within the party. The Supreme Court also stated that such questions as the election of the president of a political party, including of the SPT, fall under the competence of the party itself and all disputes as to who is the legally elected president of the party should be settled within the party by its members, in accordance with the charter of the political party. The court also rejected the author’s request to interrupt the activity of the unlawful, “artificially created” Socialist Party of Tajikistan, indicating that they could file a complaint to competent authorities (without specifying which authority).

2.15 The authors submitted a cassation appeal to the Civil College of the Supreme Court on 28 January 2005, which on 4 February 2005 upheld the previous decision. The authors also submitted an application for supervisory review with the Plenum of the Supreme Court. The Court examined the case and declared that the previous decisions were correct and well founded, indicating that it can only decide on the lawfulness of the Electoral Commission’s decision; the other problems are internal to the party and have to be resolved by the party members in conformity with the charter of the party. A further application for supervisory review was lodged with the President of the Supreme Court on 13 June 2005. In a resolution dated 29 June 2005, the President of the Supreme Court confirmed the legality of the Electoral Commission’s decision of 14 January 2005. As to the interruption of the activity of the unlawfully and “artificially created” SPT headed by Mr. G., he indicated that the claims related to an internal dispute and should be resolved within the party in accordance with the party’s charter, the courts having no competence to decide whether the leader of the SPT is the author (Mr. N.) or Mr. G. He further invoked article 25, paragraph 1, of the Act on Political Parties, which states that such issues are resolved through reorganization (unification, joining, division) or liquidation. The President of the Supreme Court recommended that the author convene the congress of the party (both political platforms) and settle the dispute.

2.16 On 29 September 2005, the authors filed an application with the Constitutional Court reiterating the claims that had been rejected by the Supreme Court, and adding that they had suffered a denial of justice. They requested the Court to issue a legal opinion on the following four questions:

- (a) Whether the Supreme Court violated their right to judicial protection;

⁶ The author requested the annulment of the decision on the following grounds: (a) the legal SPT is the one with him (Mr. N.) as president, whereas the Minister of Justice, Mr. Kh. in his letter of 16 December 2004 “recognized” as president of the party Mr. G., who was excluded from the party in March 2000; (b) in accordance with the Act on Political Parties, the existence of two parties having the same name is prohibited (the legal SPT headed by the author, Mr. N., as opposed to the pseudo-SPT headed by Mr. G.).

(b) Whether the issue of the coexistence of two Socialist parties falls under the competence of the Supreme Court;

(c) Whether the Supreme Court is obliged to examine their request in relation to the coexistence of the two parties and to terminate the activity of the illegal one;

(d) Which court or institution has jurisdiction to consider the legality of the Minister of Justice's letter in which he confirms Mr. G. as the president of the SPT and whether the Supreme Court is obliged to examine the issue on the unlawful acts of the Minister in this respect.

2.17. On 5 October 2005, the Constitutional Court rejected the case without examination of the respective claims, stating that all matters related to the organization and the functioning of political parties fall under the competence of the Supreme Court.

2.18 The authors claim that they have exhausted all available domestic remedies and that the same matter has not been examined under another procedure of international investigation or settlement.

The complaint

3.1 The authors claim that they are victims of violation of their rights under article 5 of the Covenant, as the authorities, and in particular the Senior President's counsellor (Mr. V.), the Minister of Justice (Mr. Kh.) and the Chief of the Electoral Commission (Mr. B.), have restricted "by all means" their and the other party members' electoral rights and right to freedom of association.

3.2 They claim also a violation of article 16 of the Covenant, in particular in relation to Mr. N., Mr. U. and Ms. S. (who was portrayed as a mentally ill person), since their right to recognition as persons before the law has been violated. As a result, they could not exercise their right to judicial protection.

3.3 The authors further claim a violation of article 17, as an official of the President's administration, as well as members of the security forces and other State organs, have openly interfered in their private and family life by ordering the preparation and publication of articles and other materials that have affected their reputation.

3.4 The authors maintain that article 19 has been violated, as the members of the SPT have been deprived of their right to hold opinions through the use of intimidating measures against them, such as the murder of the SPT leader, their persecution, and dismissal from work.

3.5 The authors claim to have been deprived of their right to freedom of association, including through the arbitrary revoking of their membership in the party and recognition of the "pseudo"-socialist party as lawful, in violation of article 22 of the Covenant.

3.6 According to the authors, their right to be elected without unreasonable restrictions and without distinction under article 25 (b) of the Covenant has also been violated, as they were prevented from taking part in elections. They claim that their names were not included in the electoral lists and the secrecy of the ballot was not respected.

3.7 Finally, they claim a violation of article 26, because they were victims of discrimination on grounds of political opinion.

State party's observations on admissibility and merits

4.1 By note verbale dated 8 June 2011, the State party contests the authors' allegations and submits that all their complaints have been duly registered and examined by national competent authorities in accordance with the law. Following the murder of Mr. Sa.K.

(Member of Parliament) on 30 March 1999, a criminal case was initiated by the Investigative Department of the Ministry of Security. A search warrant was issued against two suspects, Mr. Y. and Mr. S. Subsequently, the fact that one of the suspects still had not been apprehended resulted in the suspension of the criminal case. The criminal investigation was conducted in accordance with the law and the authors' allegations that no measures were taken in respect of the murder of Mr. Sa.K. are unfounded.

4.2 With regard to the authors' claims that they were subjected to pressure before and during the parliamentary election of 2000, that Mr. U. was attacked by unidentified masked armed men who stole his car and that no measures to investigate the incident were taken by the Department of Internal Affairs, the State party submits that these claims are unfounded. Mr. U. at that time was using his private car as a cab service and, on 11 August 1999, he agreed, for 3,000 Russian roubles, to drive three unidentified persons to the indicated address. On the way, those persons threatened him with a gun and stole his car. On the same day, based on the Mr. U.'s complaint, a criminal case was initiated under article 249, para. 4, of the Criminal Code (banditry). The case was closed on 1 October 1999 on the ground that the perpetrators could not be identified. The State party submits that the criminal offence is not linked to Mr. U.'s standing as candidate for the parliamentary election, since the election took place on 28 February 2000 and the registration of electoral candidates, as well as the meetings with the electors, began on 13 December 1999.

4.3 The State party further contests the authors' claims about Mr. G.'s unlawful election as president of the SPT. On 6 August 1996, the SPT was registered with the Ministry of Justice. On 21 December 1996, Mr. Sa.K. was elected as president of the party. The party was re-registered with the Ministry of Justice on 10 March 1999. Mr. R. was elected as president of the party during the fourth extraordinary congress of 23 July 2000, and following the extraordinary congress of 20 July 2004 Mr. G. became president of the party. This decision was not recognized by Mr. N. and his allies, who submitted a number of complaints with the Ministry of Justice, claiming that the party congress was held unlawfully.

4.4 As to the authors' claims that on 14 May 2004, the leadership of the SPT complained to the Interior Department of Sino district in Dushanbe regarding the unlawful use by Mr. G of the seal of the SPT Executive Committee and that their complaints remained unanswered, the State party is not in a position to assess these allegations because all the documents of the Interior Department of Sino district were destroyed on 21 January 2008 at the expiration of their retention period.

4.5 The authors' allegation that their complaints were not accepted by courts without any legal grounds is also unfounded. Mr. N. lodged a complaint with the Supreme Court on 16 January 2005, requesting the Court to annul the decision of the Electoral Commission of 14 January 2005 on the registration of five SPT candidates for the parliamentary election, as well as to interrupt the activity of the respective party. The Supreme Court rejected the complaint on 20 January 2005 and this decision was upheld on cassation by the Civil College of the Supreme Court. All the authors' supervisory review applications were duly considered and answered. The court found that the SPT was operating according to the law and that the registration of candidates for the parliamentary election had been done in compliance with the law. For the sake of a thorough examination of the case, the court questioned the representative of the Ministry of Justice. He stated in court that he had officially met with the president of the SPT, Mr. G., and the plaintiff, Mr. N., and had explained to them the requirements of the law in respect of the powers, rights and duties of political party members.

4.6 On 25 September 2006, Mr. N. lodged a complaint with the Supreme Court, requesting the annulment of the Electoral Commission's decision of 11 October 2006 by which Mr. G. was registered as the SPT candidate for president of Tajikistan. The Court,

after having examined the materials of the case file, the arguments of the parties and witness testimonies, concluded that the election of Mr. G. as president of the SPT was legal, and rejected the complaint on 31 October 2006. This decision was upheld by the Civil College of the Supreme Court on 22 November 2006. The SPT is currently headed by Mr. G. and operates on the basis of the Constitution and the Act on Political Parties.

Authors' comments on admissibility and merits

5.1 In their comments dated 27 April 2012, the authors contest the State party's assertion that all their complaints have been duly registered and examined in accordance with the law. They claim that, out of 29 various complaints, only 18 were registered. Since the SPT was an opposition party, none of their complaints were examined in accordance with the law and they were ignored or dismissed on political grounds.

5.2 The authors find illogical the information presented by the State party in respect of the investigation into the death of Mr. Sa.K. They claim that, each time, the State party invents new names for the alleged perpetrators, since the names referred to in its observations are different from the ones presented by the investigative bodies to the family in 1999. The authors are convinced that the terrorist act against Mr. Sa.K. was politically motivated. As the 1999 presidential election approached, men using vehicles with dark-tinted windows, and armed with machine guns and grenades, had constantly "chased" him. On one occasion his bodyguards surrounded and interrogated them, and discovered that they were agents of the SNSC. Mr. Sa.K. reported this to the head of the SNSC and requested an investigation. The head of the SNSC confirmed that the armed individuals were SNSC agents. Although the SPT leadership addressed the President of Tajikistan with a complaint, indicating the plate numbers of the cars which had followed Mr. Sa.K. everywhere, no measures were taken to protect him against possible attacks.

5.3 The authors reject the State party's arguments that the car incident of Mr. U. was not linked to his political activity and that the election of Mr. G. as president of the SPT was lawful. They claim that the "pseudo" congress of 20 June 2004 at which Mr. G. was allegedly "elected" as president of the SPT was organized, through abuse of authority, under the direction of employees of the presidential apparatus, namely Mr. V., senior counsellor of the President of the Republic, Mr. O., former presidential counsellor, and the leadership of the People's Democratic Party of Tajikistan. The minutes of the pseudo-congress clearly demonstrate that it was organized by persons having no connection with the SPT, and the leadership of the "party" was constituted by persons who had been expelled from the SPT in 2000, in particular Mr. G. and Mr. V. They were expelled from the party for gross breaches of its charter, theft of its funds and moral and material damage to the party. From 2000 to 2004 they had no connections with any of the organizational units of the SPT, as reflected in the SPT annual reports presented to the Ministry of Justice. The report presented after the fourth congress of the party lists neither Mr. G., nor Mr. V. as leaders of the party. The authors further refer to a number of breaches committed during the organization of the pseudo-congress of 20 June 2004⁷ in order to substantiate their

⁷ They point, inter alia, to the following breaches: (a) the congress was organized in violation of the legislation of Tajikistan and the party's charter because the procedure for the organization of ordinary and extraordinary congresses was not respected; (b) there is no reference to the number of the congress in the minutes; (c) the minutes do not refer to the number of participants and invited persons, however, Mr. G. mentioned during the congress that "out of 100 delegates, 92 are present", at the same time the list of delegates includes 73 persons only (list provided by the authors); (d) a member of the People's Democratic Party of Tajikistan appears in the minutes as a member of the SPT presidium; (e) out of the 73 delegates appearing on the list, only four are in fact members of the SPT; (f) with the exception of Kh.K., all persons confirmed as members of the party's Central Executive

arguments that materials of the so-called congress were forged, and that its organization was unlawful and contrary to the SPT charter. Based on the minutes of the pseudo-congress, the Ministry of Justice in December 2004 registered the SPT headed by Mr. G., and before the parliamentary election this party was further registered by the Electoral Commission for participation in the election. In addition, in August 2006 (before the presidential election), Mr. G. was registered as the SPT candidate for president of Tajikistan.

5.4 In the light of the above, the authors request the Committee to do justice to the members and sympathizers of the SPT and to compensate them for the damage suffered as a result of the actions of the current regime.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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 communication is admissible under the Optional Protocol to the Covenant.

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

6.3 The authors claim to have been subjected to persecution by Government officials for being leaders of the SPT. They submit that the former president of the party died in a terrorist attack in 1999 and that State party's authorities failed to conduct an investigation into his death. Mr. N. was forced to withdraw as a Member of Parliament candidate in the 2000 parliamentary election. Mr. U. was also subjected to harassment in connection with the same election by, for instance, being attacked by armed men, and later on had his car stolen. The results of the election in connection with both Mr. U. and Mr. K. were falsified, while Ms. S. was registered as a candidate for the wrong district. Many other Member of Parliament candidates received death threats by armed groups. The authors claim that they did not complain in relation to the intimidation incidents and falsification of votes for fear of reprisals.

6.4 Furthermore, the Ministry of Justice refused to recognize Mr. N. as head of the party, despite the fact that he had been elected at the congress of the party and, as a result, the SPT was barred from participating in the 2005 election. In that respect, the Committee observes that the authors submitted various complaints and appeals to the Prosecutor's Office and national courts, including the Supreme Court and the Constitutional Court, challenging the registration of the pseudo-SPT headed by Mr. G. and claiming a violation of their constitutionally protected electoral rights and right to freedom of association. However, all their claims were rejected. A cassation appeal and two applications for supervisory review by the Supreme Court were also dismissed on grounds that courts have no competence to decide on the legality of a political party or on who is the lawfully elected president of a party. The Constitutional Court did not examine the merits of their

Committee were residents of Dushanbe city, while according to the charter the members of the Central Executive Committee of SPT are elected from the representatives of the regional organizations of SPT present at the congress as delegates - none of the regional representatives participated in the congress; (g) the minutes of the congress at no point refer to the alleged election of Mr. G. as president of the party or to that of his deputy; (h) the minutes of the congress do not refer to the number of delegates participating in the voting, including the number of persons who voted for, against or abstained.

complaint, indicating that issues relating to the organization and functioning of political parties fall under the competence of the Supreme Court.

6.5 The Committee notes that the authors invoked articles 5, 16, 17, 19 and 26 of the Covenant, claiming, *inter alia*, that their right to be recognized as persons before the law has been violated and that State authorities have openly interfered in their private and family life by publishing articles damaging their reputation, that the members of the SPT have been deprived of the right to hold opinions and have been discriminated against on grounds of political opinion and have not been protected against acts of violence. However, the Committee observes that the information provided by the authors in support of their claims under these provisions is very general. Based on the materials before it, the Committee is unable to conclude that the authors have sufficiently substantiated these claims, for purposes of admissibility, and therefore declares them inadmissible under article 2 of the Optional Protocol.

6.6 Concerning the authors' claims under articles 22 and 25 (b) of the Covenant, that the arbitrary revocation of their membership in the party and the recognition of the "artificially created" Socialist Party of Tajikistan violated their freedom of association and prevented them from taking part in the elections, the Committee notes that their allegations relate primarily to a dispute between two organizations, each presenting itself as the continuation of the earlier SPT. The authors have not alleged that they have been prevented from founding a new party with a different name. The Committee further notes the decision of the Supreme Court according to which it has no competence to decide on the legality of a political party or on who is the lawfully elected president of a party, but rather internal party disputes should be decided by internal party procedures. With respect to the authors' allegation that they were prevented from participating in the parliamentary election as a result of the Electoral Commission's decision on registration of SPT election candidates presented by Mr. G., the Committee observes that the Supreme Court, when examining the authors' complaint on the annulment of the said decision, held oral hearings during which the representative of the Electoral Commission explained that Mr. G. had provided the list of SPT candidates and all documents required by law for their registration, and that no such documents for registration of SPT candidates had been received from Mr. N. (see para. 2.14 above). This latter point has not been refuted by the authors.

6.7 The Committee also observes that the authors' claims under articles 22 and 25 are intimately linked to the evaluation of facts and evidence by the State party's electoral authorities and courts. It recalls that it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence in a particular case, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence was clearly arbitrary or amounted to a denial of justice.⁸ Based on the materials made available to it, in particular the decision of the Electoral Commission on registration of SPT candidates, as referred to in the ruling of the Supreme Court, the Committee is unable to conclude that the State party's authorities acted arbitrarily in evaluating the facts and evidence of the case. Therefore, the Committee finds the authors' claims under articles 22 and 25 (b) of the Covenant inadmissible under article 2 of the Optional Protocol, for insufficient substantiation.

7. The Human Rights Committee therefore decides:

⁸ Human Rights Committee general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 26. See also, *inter alia*, communications No. 1210/2003, *Damianos v. Cyprus*, decision of inadmissibility of 25 July 2005, para. 6.3; No. 1212/2003, *Lanzarote Sánchez et al. v. Spain*, decision of inadmissibility of 25 July 2006, para. 6.3; No. 1358/2005, *Korneenko v. Belarus*, decision of inadmissibility of 1 April 2008, para. 6.3; No. 1758/2008, *Jessop v. New Zealand*, Views adopted on 29 March 2011, paras. 7.11-7.12.

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That this decision shall be communicated to the State party and to the authors.

[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.]
