



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2044/2011*, **

<i>Submitted by:</i>	T.V. and A.G. (not represented by counsel)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Uzbekistan
<i>Date of communication:</i>	16 February 2009 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 12 April 2011 (not issued in a document form)
<i>Date of adoption of Views:</i>	11 March 2016
<i>Subject matter:</i>	Unlawful and arbitrary hospitalization and detention; right to a judicial review.
<i>Procedural issues:</i>	Substantiation of claims.
<i>Substantive issues:</i>	Unlawful and arbitrary detention; right to a judicial review.
<i>Articles of the Covenant:</i>	2 (3); 7; 9, (1), (3), (4); 14 (1) and 19 (1) and (2).
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

* Adopted by the Committee at its 116th session (7-31 March 2016).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

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1. The authors of the communication are T.V. and A.G., both Uzbek nationals born in 1955 and 1968, respectively. They claim to be victims of a violation by Uzbekistan of their rights under article 2 (3); article 7; article 9 (1), (3) and (4); article 14 (1) and article 19 (1) and (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 facts as presented by the authors

2.1 The authors are spouses and are living in the Sat-Tepo building quarter in Samarkand. On 3 October 2006, the President of the Quarter's Committee and the Chair of the Khafiz Sherozi mahalla (urban division) broke into the basement of the building and installed a common water consumption measuring device, without consulting with the individual owners. The owners, including the authors, disagreed with that measure, since, in the building, there were three commercial enterprises — a bakery, a grocery shop and a hairdresser's salon — which consumed much more water than the owners of residential apartments. On 7 October 2006, a meeting of all apartment owners in the building took place. During the meeting, the first author criticized the actions of Sh. The latter, who was visibly drunk, got angry and started insulting her and threatened to lock her in a psychiatric hospital. The second author defended his wife. Subsequently, the owners wrote a common complaint against the actions of Sh. and elected the first author as their representative.

2.2 On 10 October 2006, at around 10.30 a.m., two individuals in civilian clothing came to the authors' apartment, stated that they were police officials and invited them to come to the local police station, claiming that the inspector responsible for the crime prevention in the area, Mr. N., wanted to speak with them. The authors voluntarily went to the police station with the two men. In the yard of the station, they saw an ambulance, but did not pay much attention to it. When they entered N.'s office, they saw that the latter was having a discussion with Sh. Almost immediately, several individuals in white coats apprehended the authors and, without presenting any official documents or a decision by a prosecutor or court, requested that they should sit in the ambulance. When the authors protested and resisted, N., Sh. and several police officers intervened, threw the second author to the floor, kicked him, put on handcuffs and gagged him so he could not call for help. The second author was then dragged to the ambulance and thrown to the floor. The first author tried to call relatives, but N. took her telephone and broke it, took the cane that she used for walking, and finally she too was forced to enter the ambulance. The men in white coats sat on top of the authors and the ambulance drove away in an unknown direction.

2.3 When the ambulance stopped, the authors realized that they had been taken to the city's psychiatric hospital. The authors were separated. The second author was forced to sleep on a bare net and was detained in a room with a patient who kept waiving a razor blade at him. The first author was detained in a common room with persons with mental impairments. She suffers from Bechterew's disease and severe arthritis, but was denied access to the numerous medications that she needs for her condition and the opportunity to walk, which also aggravated her condition.

2.4 Three days later, when the personnel were not paying close attention, the second author managed to call his relatives, who immediately alerted others. The authors' son-in-law, a doctor, spoke with the head of the psychiatric hospital, and the authors were released on 19 October 2006. The authors later found out in the context of civil court proceedings that, on 14 October 2006, the Chief Medical Doctor of the psychiatric hospital had issued an order to create a psychiatric evaluation commission in order to evaluate the authors' mental health. According to the order, the decision had been made because the authors had complained on numerous occasions to different institutions since 2002. The conclusion was that the first author had, inter alia, a borderline mental condition that made her want to complain and that the second author suffered from post-traumatic encephalopathy

following a car accident some years ago and was losing memory. In this regard, the authors note that the Chief Medical Doctor's order was not based on any court decision, as required by the Law on Psychiatric Help. The authors further provide details regarding different complaints to different institutions they had submitted over the years.

2.5 On 20 October 2006, the authors filed complaints regarding their unlawful placement for nine days in a psychiatric hospital to the Samarkand Regional Prosecutor's Office, to the Head of the Department of Internal Affairs and to the Khokimiyat (local authority) of the Samarkand region, in which they requested that an investigation be made into the actions of the police officer N., the Chair of Khafiz Sherozi and emergency ambulance medical doctor, Kh. However, the authors received no reply. On an unspecified date, the second author attempted to file a civil law suit against the illegal actions of N., Sh. and Kh. but, on 27 December 2006, the Samarkand City Court refused to accept the suit, stating that it was not supported by the necessary documents, namely, responses from the above-mentioned authorities. On 15 February 2007, the authors requested the Samarkand City Prosecutor's Office to inform them what actions or measures had been taken in relation to their complaint of 20 October 2006, to which no answer was provided.

2.6 Following the author's complaints to the Ombudsman, the latter conducted an investigation and, on 25 April 2007, forwarded the authors' complaint to the Samarkand City Court, stating that his investigation confirmed that illegal actions had taken place. In particular, the Ombudsman qualified the actions of the three officials as abuse of authority and violations of the Law on Psychiatric Help. On 15 May 2007, the Ombudsman transferred to the Court materials concerning the questioning of Kh., who had acknowledged that he had been "pressured" to take the authors to the psychiatric hospital.

2.7 On an unspecified date, the authors made a second attempt to file a civil law suit. On 17 May 2007, the Samarkand City Court examined the authors' arguments, questioned the parties and witnesses and rejected the authors' claims, finding that the spouses "disturbed the work" of the President of the Quarter's Committee by their numerous complaints and that the latter had been forced to request that a psychological evaluation of the authors be conducted in order to safeguard the interests of the remaining inhabitants. During the hearing, the police officer N. stated that, on 10 October 2006, he had invited the authors to discuss one of their complaints. When they arrived, he was outside his office on the street and the authors talked to Sh. in his office. Thereafter, the authors voluntarily sat in the ambulance. The Court also found that authors had not submitted their claims within the prescribed three-month time limit.

2.8 On an unspecified date, the authors appealed the decision of the City Court to the Samarkand Regional Court. The latter partly upheld the lower court's decision on 26 June 2007, stating that the authors had complained to different authorities about their unlawful placement in a psychiatric hospital on 20 October 2006. According to national law, the authorities should have replied within one month. The Court noted the authors' claim that they had only received an answer from the Department of Internal Affairs of Samarkand Region on 23 March 2007 and that, shortly after, they had approached a court with their claims. The Court observed that, if the authorities had failed to provide a reply within the prescribed time limit, the authors would have been entitled to submit a complaint regarding that lack of response before a court within one month, but had failed to do so. The Court further concluded that the proceedings related to the part concerning the authors' request to declare the medical diagnosis null and void should have been discontinued rather than rejected.

2.9 The authors unsuccessfully attempted to submit a request for a supervisory review of the above decisions to the Chair of the Supreme Court. They tried once more to complain before the Supreme Court, and the Constitutional Court, both times unsuccessfully. On 20

July 2007, the Samarkand Ombudsman also requested the Supreme Court to take measures to protect the authors' rights, but the request remained unsatisfied.

The complaint

3.1 The authors claim that the arbitrary detention in a psychiatric hospital violated their rights under article 9 (1), (3) and (4) of the Covenant.

3.2 They further claim that the beating and the humiliating treatment that they were subjected to for expressing their opinions violated their rights under articles 7 and 19 (1) and (2) of the Covenant.

3.3 Finally, the authors claim that, despite the fact that domestic criminal law foresees responsibility for illegal detention and inhuman, humiliating and degrading treatment, the responsible authorities refused to investigate their case; the authors were therefore deprived of a remedy for the violations of their rights, and the State party therefore violated article 2 (3) of the Covenant. The authors maintain that such crimes are investigated ex officio and, since the prosecution refused to investigate their claims, they were precluded from doing so themselves. They claim that the above constitutes denial of justice under article 14 (1) of the Covenant.¹

State party's observations on admissibility and merits

4.1 On 14 June 2011, the State party submitted that, on 17 May 2007, the Samarkand City Court rejected the authors' claims; that this decision was partly upheld by the Samarkand Regional Court on 26 June 2007 and that the proceedings concerning the part related to the medical doctor's diagnosis were terminated; that, in the light of the authors' inadequate behaviour, at the initiative of Sh. and N., the authors were taken to a psychiatric centre in order to examine their mental health; that, as a result of the authors' medical examination, it was concluded that the second author had suffered damage to the skull and brain following a car accident, was slowly losing memory and suffered from post-traumatic encephalopathy, and the first author was diagnosed as having Bechterew's disease and "borderline mental deviations against the background of a somatic illness".

4.2 The State party further submits that, pursuant to article 270 of the Civil Procedure Code, a person may submit a complaint to a court within three months from the day he or she discovered that his or her rights and freedoms have been violated and within one month from the day when the person receives a decision in written form from a higher body or official refusing to satisfy the complaint, or within one month from the day when the one-month time limit has expired for the authorities to reply, if they have not replied to the person in written form. In this regard, the State party noted that the authors approached a court with their claims only in April 2007, six months after their complaints to national authorities. In these circumstances, given that the authors had not presented before the court valid and reliable evidence in support of their claims, as required by article 57 of the Civil Procedure Code, and given that they had not observed the prescribed time limit for submitting their claims, the court, after taking the measures within its competence to establish the circumstances of the case, decided to reject the authors' claims.

¹ See communication No. 468/1991, *Behamonde v. Equatorial Guinea*, Views adopted on 20 October 1993, para. 9.4, where the Committee observed that "the notion of equality before the courts and tribunals encompasses the very access to the courts, and that a situation in which an individual's attempts to seize the competent jurisdictions of his/her grievances are systematically frustrated runs counter to the guarantees of article 14 (1)."

4.3 Furthermore, given that the issue of medical diagnosis correctness falls within the competence of medical experts, the appeals instance justifiably decided to partly quash the lower court's decision and terminate proceedings concerning the part related to the medical doctor's diagnosis as, pursuant to article 100, paragraph 1, of the Civil Procedure Code, a court must terminate proceedings if the issue falls outside its jurisdiction.

4.4 In the light of the above facts, the State party maintains that the domestic decisions were lawful and justified. In addition, it notes that the first author submitted a complaint to the Department of Internal Affairs of Samarkand Region on 20 October 2006. Her complaint was examined; however, the claims were found to be groundless. Consequently, the State party maintains that the authors' rights under the Covenant have not been violated during the national proceedings in the present case.

Authors' comments on the State party's observations

5.1 On 13 August 2011, the authors submitted that the national authorities had failed to take any measures in order to initiate criminal proceedings concerning their kidnapping and arbitrary detention in a psychiatric hospital. They note that their complaint of 20 October 2006 contained information about a crime under article 138 of the Criminal Code (unlawful deprivation of liberty with force), that is, about the authors' arbitrary placement in a psychiatric hospital for nine days without providing any explanation. The same complaint contained information that the actions of the police officer, N., the Chair of Khafiz Sherozi, Sh., and the emergency ambulance medical doctor, Kh., in relation to the authors constituted a crime under article 137 of the Criminal Code (kidnapping). This complaint also contained reference to "crimes committed in relation to them under articles 321 and 322 of the Criminal Procedure Code" (duty to initiate criminal proceedings and grounds for initiating criminal proceedings). In the light of the above, the authors submit that, in essence, the Prosecutor's Office was obliged to initiate criminal proceedings concerning the actions of N., Sh. and Kh.; however, their complaint was forwarded to the Department of Internal Affairs, where it was lost for unknown reasons.

5.2 The authors further explain that they had approached a civil court in a timely manner with claims about the unlawful actions of N., Sh. and Kh. and violations of their constitutional rights. In this connection, they reiterate that, on 27 December 2006, the Samarkand City Court refused to accept the suit, stating that it was not supported by the necessary documents, namely, responses from the national authorities. Consequently, they had observed the prescribed time limits under article 270 of the Civil Procedure Code.

5.3 The authors argue that they have never behaved inadequately and that the State party has not provided any evidence attesting the contrary. In addition, the second author was granted permission to drive a car in 2005 despite his "post-traumatic encephalopathy". The authors further note that the medical doctor K., who was in charge of supervising the first author's examination, did not speak Russian and used an interpreter to communicate with the first author. K. was the doctor who diagnosed that the first author suffered from "somatic deviations of psyche of borderline character with accentuated personality", or, in other words, was "a person who constantly wants to complain". Consequently, the authors contest this medical doctor's ability to reach a proper conclusion concerning the first author's mental health.

5.4 The authors also submit that they had submitted all the necessary evidence and facts of the case in order to satisfy their request and initiate criminal proceedings against the responsible persons. In addition, they note that, during the civil proceedings before the

Samarkand City Court,² the emergency ambulance doctor Kh. acknowledged that he had been pressured to take the authors to the psychiatric hospital on 10 October 2006. Furthermore, the State party claims that the authors were taken to the psychiatric hospital at the initiative of Sh. and N.; however, the authors submit that, during the proceedings before the Samarkand City Court, N. testified that, on 10 October 2006, he had invited the authors to discuss one of their complaints and that, when they arrived, he was outside his office on the street, and that the authors had voluntarily sat in the ambulance.³ As to the State party's argument that the authors' complaint of 20 October 2006 was examined by the national authorities, the authors note that they are not aware of this examination and that they have never been informed who performed this examination and what were the results. In this regard, they note that, according to the information they received from the Prosecutor's Office and Department of Internal Affairs of Samarkand Region, no investigation was carried out in relation to their complaints and the authorities had no intention of initiating such an investigation.

5.5 The authors finally reiterate a number of facts, arguing that their rights have been violated, and provide extensive explanations concerning their complaints to different institutions since 2002 and their reasons for submitting them.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

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

6.3 The Committee further recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.⁴ In the context of the authors' claims under article 9 (1) and (4) of the Covenant, and their claim under article 14 (1) of the Covenant, the Committee takes note of the authors' submission that they have exhausted all available domestic remedies and that, after their release from the hospital, they complained about their involuntary hospitalization to a number of national authorities, including to the Prosecutors Office, but all in vain. Furthermore, on an unspecified date, the second author had attempted to file a civil lawsuit against the unlawful actions of N., Sh. and Kh. but, on 27 December 2006, the Samarkand City Court refused to accept the suit, stating that it was not supported by the necessary documents, namely, responses from the above-mentioned authorities. Furthermore, the Committee observes that, during the second set of civil proceedings initiated by the authors, the Samarkand City Court assessed the information and arguments presented by the parties and witnesses. For example, it established that, on 18 May 2006, the authors had been diagnosed by the Psychiatric Health Centre with having, inter alia, "borderline mental deviations against the background of a somatic

² See para. 2.6 above.

³ See para. 2.7 above.

⁴ See, for example, communication No. 2097/2011, *Timmer v. the Netherlands*, Views adopted on 24 July 2014, para. 6.3.

illness” and post-traumatic encephalopathy; that the spouses had “disturbed the work” of the President of the Quarter’s Committee by their numerous complaints; and that the latter had been forced to request a psychological evaluation of the authors in order to safeguard the interest of the remaining inhabitants. Thereafter, the authors tried unsuccessfully to appeal that decision under the appeals and supervisory review proceedings. In addition, the Committee notes that the State party has not contested the authors’ submission that they had exhausted domestic remedies. In these circumstances, the Committee considers that, in the present case, it is not precluded by article 5 (2) (b) of the Optional Protocol from examining this part of the communication.

6.4 As to the authors’ claim that their treatment upon admission to the hospital and during the period of hospitalization from 10 until 19 October 2006, constitutes a violation of their rights under article 7 of the Covenant, in the light of the information available on file, the Committee observes that the authors have not raised this claim at the domestic level. Accordingly, the Committee declares this part of the Communication inadmissible pursuant to article 5 (2) (b) of the Optional Protocol.

6.5 As concerns the authors’ claims under article 7, read alone and in conjunction with articles 2 (3) and 19 of the Covenant, insofar as they relate to the reasons of their involuntary hospitalization per se on account of the fact that they allegedly disturbed the work of the President of the Quarter’s Committee with their numerous complaints, the Committee observes that these claims are closely linked to the substance of the authors’ claims under article 9 (1) and (4) of the Covenant, as well as their claim under article 14 (1) of the Covenant. In these circumstances, for the reasons mentioned in paragraph 6.3 above, the Committee is of the view that in the present case it is not precluded by article 5 (2) (b) of the Optional Protocol from examining this part of the communication.

6.6 Furthermore, the Committee takes note of the authors’ claim that the State party violated their rights under article 9 (3) of the Covenant. The Committee recalls that, according to its general comment No. 35 (2014), article 9 (3) applies only in connection with criminal charges. In this connection, the Committee considers that, on the basis of the material before it, the authors have not shown sufficient grounds and arguments to support their claim regarding a violation of their rights under this article of the Covenant. The Committee therefore considers that the authors have not sufficiently substantiated this claim for the purposes of admissibility and concludes that it is inadmissible under article 2 of the Optional Protocol.

6.7 The Committee considers that the authors have sufficiently substantiated their claims raising issues under article 9 (1) and (4) of the Covenant; article 7, read alone and in conjunction with article 2 (3); article 19 of the Covenant insofar as they relate to the authors’ involuntary hospitalization per se; and article 14 (1) of the Covenant, for the purposes of admissibility. Accordingly, it declares the above claims admissible and proceeds to their examination on the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the authors’ claims that their arbitrary hospitalization and detention in a psychiatric hospital for nine days violated their rights under article 9 (1) and (4) of the Covenant and that they were denied access to court, in violation of article 14 (1) of the Covenant.

7.3 The Committee recalls that commitment to and treatment in a psychiatric institution against the will of a patient constitutes a form of deprivation of liberty that falls under the terms of article 9 of the Covenant.⁵ It further recalls that article 9 (1) requires that deprivation of liberty must not be arbitrary and must be carried out with respect for the rule of law. The second sentence of paragraph 1 prohibits arbitrary arrest and detention, while the third sentence prohibits unlawful deprivation of liberty, i.e., deprivation of liberty that is not imposed on such grounds and in accordance with such procedure as are established by law. The two prohibitions overlap, in that arrests and detentions may be both arbitrary and unlawful.⁶ Furthermore, it recalls that the notion of arbitrariness is not to be equated with “against the law” but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.⁷

7.4 While acknowledging that an individual’s mental health may be impaired to such an extent that, in order to avoid harm, the issuance of a committal order may be unavoidable,⁸ the Committee considers that involuntary hospitalization must be applied only as a measure of last resort and for the shortest appropriate period of time, and must be accompanied by adequate procedural and substantive safeguards established by law.⁹ The procedures should ensure respect for the views of the individual and should ensure that any representative genuinely represents and defends the wishes and interests of the individual.¹⁰

7.5 In the light of the above, the Committee notes the author’s allegations that they were apprehended and involuntarily hospitalized for nine days, in violation of the national legislation and without the order of the court, that there was no immediate medical examination carried out, which would then decide whether the hospitalization had been justified, and that neither was a representation assigned to them nor were they allowed to contact relatives. The Committee also notes that, following the authors’ complaints, the Ombudsman conducted an investigation and, on 25 April 2007, forwarded the authors’ complaints to the Samarkand City Court, stating that his investigation had confirmed that illegal actions had taken place in the authors’ case. In particular, the Ombudsman qualified the authors’ involuntary hospitalization as abuse of authority and violations of the Law on Psychiatric Help.

7.6 The Committee further observes the authors’ submissions that, on 14 October 2006, the Chief Medical Doctor of the psychiatric hospital ordered the creation of a psychiatric commission to evaluate the authors’ mental health and that this decision was taken four days after the authors’ involuntary hospitalization. The Committee also observes that, according to the order of Chief Medical Doctor of the psychiatric hospital, the decision was made because the authors had been constantly complaining to different institutions since 2002. Furthermore, the Committee observes that, on 17 May 2007, the Samarkand City Court established that the spouses “disturbed the work” of the President of the Quarter’s Committee, Sh., by their numerous complaints and that the latter was forced to request that

⁵ See, for example, communications No. 754/1997, *A. v. New Zealand*, Views adopted on 15 July 1999, para. 7.2; and No. 1061/2002, *Fijalkowska v. Poland*, Views adopted on 26 July 2005, para. 8.2.

⁶ See general comment No. 35 (2014) on article 9 (Liberty and security of person), CCPR/C/GC/35, paras. 10 and 11.

⁷ *Ibid.*, para 12; see also, for example, communication No. 1875/2009, *M.G.C. v. Australia*, Views adopted on 26 March 2015, para. 11.5.

⁸ See *Fijalkowska v. Poland*, para. 8.3.

⁹ See general comment No. 35 (2014), para. 19; see also *Fijalkowska v. Poland*, para. 8.3.

¹⁰ See general comment No. 35 (2014), para. 19. See also CCPR/C/CZE/CO/2, para. 14; see also Committee on the Rights of the Child, general comment No. 9 (2006) on the rights of children with disabilities, CRC/C/GC/9, para. 48.

a psychological evaluation of the authors be conducted in order to safeguard the interest of the remaining inhabitants. The Committee also notes the State party's response that the authors were taken to a psychiatric centre in order to examine their mental health; that, as a result of the medical examination, it was concluded that the second author had received damage to the skull and brain following a car accident, was slowly losing memory and suffered from post-traumatic encephalopathy; and that the first author had been diagnosed having Bechterew's disease and "borderline mental deviations against the background of a somatic illness".

7.7 The Committee notes that the authors challenge the validity of their medical diagnosis, while the State party upholds its correctness. The Committee observes, however, that the State party has failed to present any pertinent explanations or arguments in the present case that involuntary hospitalization was necessary and served the purpose of protecting the authors from serious harm or preventing injury to others. Furthermore, the State party has not responded to the findings of the Ombudsman's office, which confirmed the abuse of authority and violation of the procedure prescribed by the national legislation when the authors were apprehended and involuntary hospitalized. The Committee observes that, even if the State party's diagnosis of the authors was accepted, the existence of an intellectual or mental disability may not in itself justify a deprivation of liberty but rather any deprivation of liberty must be necessary and proportionate, for the purpose of protecting the individual in question from serious harm or preventing injury to others.¹¹

7.8 In the light of the above, the Committee notes that the information submitted by the parties does not attest that the authors were incapable of taking care of themselves or that they had a mental impairment that could cause substantial harm to their health. Furthermore, the Committee considers that particular concern should be raised in relation to the fact that the authors were admitted to a psychiatric hospital even though they did not pose any danger whatsoever to themselves or others and that both spouses were committed at the same time. The Committee notes that, even though the right to liberty is not absolute,¹² a detention of an individual is such a serious measure that it is justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest, which might require that the person concerned be detained. Consequently, for these reasons, the Committee finds that the authors' committal to the psychiatric hospital and holding there for nine days was unlawful and arbitrary under article 9 (1) of the Covenant.

7.9 As to the authors' claims under article 9 (4) of the Covenant, the Committee recalls that article 9 (4) entitles anyone who is deprived of his or her liberty by arrest or detention to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the detention and order release if the detention is not lawful.¹³ The right applies to all detention by official action or pursuant to official authorization, including detention in connection with involuntary hospitalization. The right to bring proceedings applies in principle from the moment when an individual's liberty is deprived and any substantial waiting period before a detainee can bring a first challenge to detention is impermissible.¹⁴ In this connection, the Committee notes that the authors were committed to a psychiatric hospital without any court order and that they were not served with any

¹¹ See *Fijalkowska v. Poland*, para. 8.3; and communication No. 1629/2007, *Fardon v. Australia*, Views adopted on 18 March 2010, para. 7.3. See also CCPR/C/RUS/CO/6, para. 19; and the Convention on the Rights of Persons with Disabilities, art. 14 (1) (b).

¹² See general comment No. 35 (20014) on article 9, para. 10.

¹³ *Ibid.*, para. 39.

¹⁴ *Ibid.*, paras. 40-42.

copy of a decision concerning the grounds for their involuntary hospitalization upon apprehension on 10 October 2006. Consequently, the authors had to wait until after their release before becoming aware of the possibility of, and actually pursuing, such an appeal. In the Committee's view, the authors' right to challenge their detention was rendered ineffective by the State party's failure to serve the committal order on them prior to or during the initial period of their detention.¹⁵ Therefore, in the circumstances of the present case, the Committee finds a violation of article 9 (4) of the Covenant.

7.10 As regards the authors' claim under article 7, read alone and in conjunction with article 2 (3) of the Covenant, the Committee has to evaluate whether the forced hospitalization amounted to inhuman and degrading treatment or punishment. The Committee observes that, while involuntary hospitalization may be applied as a measure of last resort and, at times, may be justified to protect the life and health of individuals, illegal and arbitrary committal to hospital may cause mental and physical suffering and thus amount to inhuman and degrading treatment or punishment, with the meaning of article 7 of the Covenant. The Committee further observes that involuntary hospitalization or forced treatment applied in order to punish or humiliate is contrary to article 7 of the Covenant.

7.11 The Committee notes the State party's submission in the present case and the findings of the Samarkand City Court that the authors' committal to the psychiatric hospital was the result of their "inadequate behaviour" as they "disturbed the work" of the President of the Quarter's Committee by their numerous complaints. The Committee also reiterates its conclusion that the authors' committal to the psychiatric hospital was a result of an arbitrary and illegal decision and had no proper medical justification (see paras. 7.7 and 7.8 above). On the basis of available evidence, the Committee therefore concludes that the decision to commit authors to the psychiatric hospital appeared to be driven by the desire to punish or humiliate the authors for exercising their right to complain and for expressing their views in relation to the work of Mr. Sh.

7.12 Accordingly, the Committee is of the view that, in the present case, the authors' involuntary hospitalization for nine days for allegedly disturbing the work of the President of the Quarter's Committee with their numerous complaints amounted to inhuman and degrading treatment or punishment, within the meaning of article 7 of the Covenant.

7.13 In the light of the finding of the violation of articles 9 (1) and (4) and 7 of the Covenant, read alone and in conjunction with article 2 (3), the Committee will not examine separately the authors' claims under articles 14 (1) and 19 of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the State party has violated the authors' rights under articles 9 (1) and (4) and 7, read alone and in conjunction with article 2 (3) of the Covenant.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to: (a) conduct an impartial, effective and thorough investigation concerning the authors' apprehension on 10 October 2006 and their unlawful hospitalization until 19 October 2006 in the city's psychiatric hospital, and prosecute and punish appropriately those responsible; and (b) provide the authors with adequate compensation and reimbursement of any legal costs incurred by the authors. The State party is also under the obligation to take steps to prevent similar violations in the future.

¹⁵ See *Fijalkowska v. Poland*, para. 8.4.

10. 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 and that, pursuant to article 2, the State party has undertaken to ensure to all individuals within its territory and 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. The State party is also requested to publish the present Views, and to have them widely disseminated in Uzbek and Russian in the State party.
