

STATEMENT

**by Mr. Bahodir Abduvaliev, Acting Deputy Department Head
of the General Prosecutor of the Republic of Uzbekistan
at the OSCE Human Dimension Implementation Meeting
(22 September-3 October 2014, Warsaw)**

Protection of human rights and freedoms and combating terrorism

In accordance with the provisions of international conventions ratified by Uzbekistan, the national legislation was introduced with amendments and supplements, in compliance with which the human rights and freedoms were brought to the qualitatively new level.

These principles embodied in the founding document of our country are also reflected in other legislative documents. In particular, the Article 23 (Presumption of innocence) of the Criminal Procedural Code states that the suspect accused or defendant is presumed innocent until the guilt of a crime is proven in the manner prescribed by the law and established by a valid court sentence. This provision is mandatory for all cases of law enforcement, including the investigation of cases related to terrorism, religious extremism, drug trafficking, that is regardless of severity of the crime a person committed.

Important value in the protection of human rights plays liberalization, humanization and decriminalization of the criminal and criminal procedure legislation. Thus, in accordance with the ongoing judicial and legal reforms the classification of crimes has been changed, as a result, 75% of the crimes from the category of grave and very grave transferred to the category of crimes that do not pose a major public threat and less grave.

Moreover, significantly expanded the opportunity for crimes committed in the economic sphere - instead of arrest and imprisonment applies economic sanctions in the form of a fine. Also, in the 11 articles of the Criminal Code were introduced the provisions, in accordance with which, in the case of reparation of damages the penalty in the form of imprisonment will be not applied.

As a landmark in the field of protection of human rights and freedoms was the introduction of "Habeas Corpus" by adopting the Decree of the President of the Republic of Uzbekistan **"On transferring to the courts the right to authorize the detention"** (August 8, 2005). The law strengthened the judicial supervision over protection of human rights during the preliminary investigation and fully applied throughout the country.

In order to further strengthen the institution of "Habeas Corpus" was adopted the Law of the Republic of Uzbekistan **"On introducing changes and amendments to certain legislative acts of the Republic of Uzbekistan in connection with the further reform of the judicial and legal system"**, under which **the courts granted the right to remove from position and placement of a person to a medical facility.**

Transfer of the above powers to the courts allowed further to protect the rights of parties to the proceedings, as well as to expand the judicial control over activities of inquiry and preliminary investigation, and thus broaden the scope of this institution.

Equally important legislation is the Law of the Republic of Uzbekistan “On introducing changes and amendments to certain legislative acts of the Republic of Uzbekistan in connection with improvement of the legal profession”. In accordance with the Law, the arrested, the suspect and the accused irrespective of the gravity of offense **received additional rights**, in particular, to make a phone call to the lawyer or a close relative starting from the moment of actual detention, and to refuse to testify and be notified that testimony may be used against him as evidence. The latter confirms that took place the implementation of democratic institute – “Miranda rights” in the national legislation.

The law also obliged the law enforcement agencies to provide the detainee a meeting with a lawyer in private after the arrest, before the first interrogation, and provided lawyers with the right to meet with a client in private without limiting the duration and quantity, and introduced the institution of attorney for witness.

Another act in the field of human rights protection is the Law of the Republic of Uzbekistan “On operational and investigative activities” (December 25, 2012), which provides for the establishment of real legal guarantees for the rule of law, provision of citizens’ rights and freedoms in activities of operational and search nature.

Republic of Uzbekistan, as a full member of the world community, takes active measures to detect, prevent and combat the threat of terrorism throughout the country, and actively participates both in the bilateral and multilateral treaties dealing with different aspects of combating this negative phenomenon.

Uzbekistan has acceded to the 13 international counter-terrorism agreements, norms of which are implemented in the national legislation based on the national interests of the state and society, human rights, history and mentality of the Uzbek people.

The country has implemented the provisions of Resolution №1373 of the UN Security Council, and that confirmed by the systematic submission of the reports of Uzbekistan to the Counter-Terrorism Committee.

Uzbekistan is also a party to the agreements governing the counter-terrorism at the regional level within the framework of organizations such as the SCO and the CIS.

At the national level, Uzbekistan operates and is constantly improving the legal framework for counter-terrorism, in which the main acts are:

- Law of the Republic of Uzbekistan “On Combating Terrorism” (December 15, 2000);
- Law of the Republic of Uzbekistan “On combating the legalization of incomes received from crime and financing of terrorism” (August 26, 2004);

- Criminal Code of the Republic of Uzbekistan (September 22, 1994);
- Decree of the President of the Republic of Uzbekistan “On release from criminal responsibility of citizens of Uzbekistan who mistakenly joined terrorist groups” (September 6, 2000);
- Resolution of the President of the Republic of Uzbekistan “On measures to strengthen the fight against crimes in the financial, economic, tax spheres, money laundering” (April 21, 2006).

The legislation provides a clear definition of terrorism.

Article 2 of the Law “On Combating Terrorism” provides the definition of “terrorist act”, according to which, the terrorist act is committing a crime of terrorist nature in the form of the seizure or detention of hostages, attacks on a state or public figure, representatives of the national, ethnic, religious or other groups, the foreign states and international organizations; the capture, destruction of buildings of public or social significance; the explosion, arson, threat or use of explosives, radioactive, biological, explosive, chemical, and other toxic substances; the capture, theft, damage, destruction of land, water and air vehicles; the creation of panic and provoking riots in places of public gatherings and events; the harm, or threat to life, health of population, property of individuals or legal entities by the commission of accidents, disasters of man-made nature; the spread of threats by any means and methods, and other acts of terrorist nature defined by the legislation Republic of Uzbekistan and the commonly recognized rules of international law.

The legislation of Uzbekistan on the fight against terrorism is in full compliance with the guarantees provided by the International Covenant on Civil and Political Rights.

According to the Article 4 of the legislation, one of the main principles of fighting terrorism is a legitimacy and priority of human rights, freedoms and legitimate interests.

In accordance with the provisions of the Article 28 of the Law, the persons involved in terrorist activities, shall be liable in accordance with the law.

In case of a voluntary refusal to participate in terrorist activities, informing the appropriate state agencies and an active facilitation in prevention of offensive grave consequences and realization the goals of the terrorists, the person may be released from liability under the law.

Responsibility for terrorism is provided by the Article 155 of the Criminal Code of the Republic of Uzbekistan, and, in this respect, all the principles of the Criminal Code specified in the general section are applied to persons suspected and accused of terrorism.

According to the provisions of the Article 24 of the Criminal Procedural Code, the suspect, the accused and the defendant **have the right to protection**. Right to protection is provided through the responsibility of an inquiry officer, investigator, prosecutor, court to explain to the suspect, the accused and the defendant the rights granted by the law, and to ensure that he will have an actual

opportunity to use all legal means and methods for the protection of accusation against him.

The above rule also applies to the persons involved in the commission of crimes related to terrorism.

According to the Criminal Code, the crimes related to the implementation of terrorist acts are referred to the crimes against peace and security.

According to the Article 155 of the Criminal Code, terrorism covers the following illegal acts:

- violence;
- use of force;
- any other acts that endanger persons and property;
- threat to their implementation;
- as well as activities aimed at ensuring the existence, funding of the terrorist organization, preparation and carrying out of terrorist acts, direct or indirect provision or collection of any funds, resources or other services to terrorist organizations or persons assisting or participating in terrorist activities;
- attempt on life;
- causing bodily harm to the government or public figures or representatives of the government;
- actions prescribed in the first or second part of the Article 155 of the Criminal Code, resulted in:
 - a) a person's death;
 - b) other grave consequences.

It should be emphasized that the perpetrators of terrorist acts, in accordance with the articles 2,6,7,9 and 14 of the International Covenant on Civil and Political Rights guaranteed:

in accordance with the Article 5 of the Criminal Code, **equal rights before the law** regardless of sex, race, nationality, language, religion, social origin, beliefs, personal and social status;

the right to life, as the Article 155 of the Criminal Code does not provide for imposition of the death penalty in connection with its abolition in Uzbekistan;

the right to protection of torture and other cruel, inhuman or degrading treatment or punishment, in accordance with the Article 235 of the Criminal Code;

the right to personal immunity and protection against wrongful detention and imprisonment in connection with introduction of the "Habeas Corpus" in Uzbekistan defined under the Articles 242, 243 of the Criminal Procedural Code, and **the right to have their case examined by an independent and impartial court**, to review of the judgment on appeal, cassation and supervisory review proceedings in accordance with the Criminal Procedural Code.

Terrorism is one of the most serious crimes. In this regard, in the course of a criminal investigation regarding to a person committed a terrorist act should be applied equal rules of the criminal procedural legislation of the Republic of

Uzbekistan, as similarly to persons who have committed other crimes under the Articles 48 (the rights and obligations of the suspect) and 46 (the rights and obligations of the accused) of the Criminal Procedural Code.

In particular, in line with other rights provided for by the above mentioned articles, we can distinguish the fundamental **right to protection**, the right to make a phone call to a lawyer or a close relative from the moment of actual detention; the refusal to testify and be notified that the testimony may be used against them as evidence; the private meeting with a lawyer without limitation in duration and quantity, and others.

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Prevention of torture

Important step in the field of human rights and freedoms was the condemnation both at the state and the constitutional level of **the use of unlawful methods of treatment and punishment**. Thus, the President of Uzbekistan Islam Karimov during his speech at the 6th session of the Oliy Majlis of Uzbekistan in 2001 stressed that “not outlived the malpractice of power investigation, when first comes an arrest, isolation from society, and then begins proof of guilt. Some unscrupulous law enforcement officials put in the foreground not protection of the citizens’ rights and interests of citizens, but desire to intimidate, show their power and omnipotence, create the appearance of the fight against crime”.

Constitutional condemnation found reflection in the Article 26 of the Constitution of Uzbekistan, according to which **no one shall be subjected to torture and other cruel and inhuman treatment**. Norms enshrined in the Article 5 of the Universal Declaration of Human Rights were implemented in the national legislation, and their violation is a criminal offense.

Important role in the field of protection of human rights and freedoms plays implementation of the National Plans of Action, including the implementation of the Concluding observations of the Committee against Torture (39th session 5-23 November 2007, Geneva). In particular, in accordance with the provisions of the Convention and the National Plan of Action, the Law of the Republic of Uzbekistan dated August 30, 2003 introduced a new version of the Article 235 of the Criminal Code of the Republic of Uzbekistan (*Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*).

The new version of the Article 235 of the Criminal Code defines torture and other cruel, inhuman or degrading treatment, which in full complies with the requirements of the UN Convention.

In order to observe strictly the provisions of the Convention against Torture, the General Prosecutor issued an order on the radical improvement of prosecutorial supervision to ensure the rights and freedoms of individuals in criminal procedure, and, according to the order of the Minister of Internal Affairs, the Article 235 of the Criminal Code in the new edition has been brought to the attention of each staff member and carried out the preventive work with the staff explaining the consequences of using torture.

To effectively combat violations of human rights, the country has legislatively fixed the order for receiving and dealing with complaints regarding to misconduct of law enforcement personnel, including torture. Thus, in accordance

with the Article 329 of the Criminal Procedural Code, the statements, reports and other information on the crimes should be registered and approved immediately, and, if necessary, verified the legality of reason and sufficiency of grounds for instituting criminal proceedings directly or by means of inquiry - not later than 10 days.

At the same time, it should be noted that according to the agreements signed in 2008 by the General Prosecutor's Office, Authorised Commissioner for Human Rights of the Oliy Majlis of the Republic of Uzbekistan (Ombudsman) and the National Human Rights Centre, the representatives of the above organizations are involved in independent investigation of allegations related to violations of human rights by employees of law enforcement agencies.

In addition, the country effectively operates the **Interdepartmental Working Group (IWG)** to monitor the observance of human rights by law enforcement agencies established by the Order №112 of the Prime Minister of the Republic of Uzbekistan on February 24, 2004 (new edition of the Resolution №227 of July 23, 2012). The IWG includes along with the senior officials of law enforcement agencies the heads of the Ministries of Justice and Foreign Affairs, the National Human Rights Centre and the Secretariat of the Authorised Commissioner for Human Rights of the Oliy Majlis of the Republic of Uzbekistan (Ombudsman), the representatives of non-governmental and public organizations and others.

During its meetings the IWG considers statements, including those submitted to OHCHR, on the illegal actions of law enforcement officers, conducts their inspection, and based upon this approves the appropriate decision. Carefully studied the complaints of citizens about the facts of a use by law enforcement officials of torture and other degrading treatment, at active participation of the national institutions and wide publicity. This method is also one of the elements of social control in the criminal process, and it provides the independent assessment of the inspection results for reports and complaints on illegal actions of law enforcement officers.

Being aware of the need to involve the civil society in the national processes of preventing torture, the IWG has considered a model of the national preventive mechanism (NPM).

In accordance with the draft provisions of the project, as participants of the national preventive mechanism act the Authorised Commissioner for Human Rights of the Oliy Majlis of the Republic of Uzbekistan (Ombudsman), the members of the Commission to comply with the constitutional human rights and freedoms, as well as the National Human Rights Centre, the Independent Institute for Monitoring of Formation of Civil Society and other non-profit organizations carrying out activities for the protection of the legitimate human rights and interests.

The main objective of the NPM is defined as following:

- establishment of a system of regular visits to correctional facilities, detention centers and other specialized institutions by the Authorised Commissioner for Human Rights of the Oliy Majlis of the Republic of Uzbekistan (Ombudsman), representatives of civil society in order to prevent torture and other cruel, inhuman or degrading treatment or punishment in prisons;
- improvement of social control in correctional facilities and detention centers by introducing the national preventive mechanism;
- establishment of a system of protection and health of persons in prisons.

In turn, the investigation of complaints and allegations of unlawful practices by law enforcement officers, in accordance with the functional task, is assigned to the competence of special units of the internal security (special inspections on personnel), with vertical subordination to the head of a law enforcement agency. These units are independent since crime prevention, detection and investigation of crimes are not included in their function, and they are subordinate to the bodies and entities engaged in the fight against crime.

Moreover, to prevent cases of illegal treatment, the order of the General Prosecutor established the obligation to observe strictly and comply with the requirements of the Convention during the prosecutorial supervision over observance of laws in the field of human rights. In this regard, the prosecution authorities every 10 days test the legality of detention of prisoners in detention centres. In addition, prosecutors on monthly basis held the inspection of detention of persons in pre-trial detention, during which verified complaints and petitions received from detainees and convicts. In case of detection of violations, appropriate measures of prosecutorial response are taken.

Uzbekistan banned the use of evidence obtained under duress. In particular, the Article 17 (Respect for honor and dignity) of the Criminal Procedural Code states that the judge, the prosecutor, and the investigator are obliged to respect the honor and dignity of the persons involved in the case. No one shall be subjected to torture or other cruel or humiliating or degrading treatment.

In addition, the part 2 of the Article 22 (Establishment of Truth) of the Code indicates that to establish a truth of the case can be used only the information that is discovered, tested and evaluated in the manner prescribed by the criminal procedural legislation of the country. The article prohibits testimony from a suspect, accused, victim, witness or other parties to the case by means of violence, threats, violation of their rights and other illegal means.

During the evaluation of a proof, evidence of the suspect person of his crimes and the recognition of guilt by the accused may put a basis of the indictment only upon a confirmation of such recognition with the totality of the evidence. The data set by a testimony of the suspect and the accused, as well as the other evidence, are subject to verification and evaluation in connection with all the circumstances of the case as in the case of recognition, so in the case of denial of defendant's guilt (Criminal Procedural Code, Article 112 "Evaluation of evidence of the suspect and the accused").

Along with this, the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan of December 19, 2003 “On the practice of application of laws by courts to ensure the suspect, the accused the right to be protected” stated that the evidence produced by the means violating human rights, including the use of torture cannot be admitted as evidence in the case.

In addition, according to the Resolution of the Plenum of the Supreme Court of December 24, 2004 “On some issues of application of the Criminal Procedural Law on admissibility of evidence” as inadmissible evidence are also related the evidence, including confessions, obtained through torture, violence or other cruel, inhuman or degrading treatment, as well as by fraud and other illegal methods.

Clarification of the Supreme Court of the Republic of Uzbekistan on the application of legislation are binding on the courts, other bodies, enterprises, institutions, organizations and officials applying legislation, which was clarified (Part 3 of the Article 21 of the Law “On Courts”). In turn, the Supreme Court of the Republic of Uzbekistan in its decisions refers to the norms of international treaties, including in the field of human rights.

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On abolition of the death penalty

As an act of extreme importance in the field of human rights protection was the adoption of the Law of the Republic of Uzbekistan **“On abolition of the death penalty”** (dated January 1, 2008). Due to exclusion of the death penalty from criminal punishment system, there have been relevant changes and amendments to the national legislation, which replaced the death penalty with life imprisonment or long prison terms (up to 25 years).

Punishment of life imprisonment or long prison terms are not assigned to the minors, women and men over 60 years old.

It should be noted that on December 10, 2008 Uzbekistan ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights. Thus, Uzbekistan abolished the death penalty in the peacetime and wartime as well.

The approved measure was a practical proof of the fundamental idea laid down in the Article 13 of the Constitution that “democracy in the Republic of Uzbekistan is based on universal principles, according to which the highest value is a human being, his life, freedom, honor, dignity and other inalienable rights”.

After the entry into force of the Law, the sentences of convicts, who had previously been sentenced to death, were revised and replaced with long-term imprisonment or life imprisonment.

In the period of 2006-2008, none of the previously issued death sentences in Uzbekistan were brought to execution.

Of course, at approval of such a decision were taken into account the provisions of international instruments, because a number of global declarations and conventions on human rights defined the discrepancy of a death penalty to the fundamental human right to life.

Another issue related to the death penalty rests on the goals and objectives of criminal punishment.

In accordance with the principle of humanity of the criminal legislation of Uzbekistan, punishment and other legal sanctions are not intended to cause physical suffering or humiliation of human dignity, but it applies regarding to the persons committed crimes to correct them and prevent new crimes.

No matter what type of ruthless criminal a person is, can the principle of humanity will reign after his execution, and whether the goal of punishment, that is to correct person, will be achieved ?! It is from this point of view the abolition of the death penalty, of course, was a right step in this direction.

Another important point is that the condemnation of a person to death, of course, brings endless pain and suffering to the family members and friends while denigrating their further lives. And that is not fair.

Moreover, such innovation in the legislation will prevent an unjustified conviction of a person to death, and will provide an opportunity to save person's life.