ALTERNATIVE NGO REPORT

to the United Nations Human Rights Committee

in relation to the examination of the

Initial Report
by the Republic of Tajikistan

on the implementation of the
International Covenant on Civil and Political Rights

MAY 2005

INTRODUCTION

The Republic of Tajikistan had ratified all main UN Human Rights documents, but for a long time failed to comply with the requirement to submit the regular reports on the implementation of these documents.

In July 1999, the Government of the Republic of Tajikistan requested the Office of UN High Commissioner on Human Rights (OHCHR) to provide assistance in preparing reports on the main UN Human Rights documents.

The Needs Assessment Mission of the OHCHR visited Tajikistan from May 14 to 28, 2000 with the objective to identify the type of assistance needed by the country in order to fulfill its obligations under the reporting procedures. The Mission met with governmental officials and representatives of non-governmental organizations, and also organized a three-day workshop on the reporting procedures to the UN Committees. The Mission adopted the following recommendations:

- to create relevant coordination body within the government,
- to open an information and documentation centre,
- to organize training programs for governmental officials and representatives of non-governmental organizations
- and to conduct awareness raising campaigns for the general public.

In 2002, The Commission on the Implementing the International Obligations of Tajikistan in the Field of Human Rights under the Government of the Republic of Tajikistan was created.

The Expert Groups with mandate to prepare the reports to different UN Committees on Human Rights were created. The members of each Expert Group include the representatives from both governmental institutions and from non-governmental organizations.

The preparation of the National Report on Implementation of the International Covenant on Civil and Political Rights (ICCPR) to the UN Human Rights Committee ended in 2004. The process of preparation of the National Report was open; the Expert Group organized twice the Round Tables for the discussion of the draft report. International experts, representatives of government, civil society and international organizations participated in these Round Tables.

The National Report on the Implementation of ICCPR is the Initial Report submitted by the Republic of Tajikistan. The Report encompasses all main legislative aspects regulating the issues related to the ICCPR rights. The Report openly describes certain shortcomings of the national legislation and practice, the problems related to the implementation of civil and political rights in Tajikistan. Nevertheless, the National Report did not cover numerous issues of concern.

The Alternative NGO Report on the Implementation of the International Covenant on Civil and Political Rights (covering the years 1999-2004) was jointly prepared by the following non-governmental organizations and professional groups:
NGO Republican Bureau on Human Rights and Rule of Law;
National Association of Independent Media;
Collegiums of Advocates of Sogd region;
NGO “GIV-Accent”
NGO «Analytical Consulting Center on HR »;
NGO “Center on gender issues”
NGO “Human and Society Development Center”
NGO «Safety Childhood».

Independent attorneys at law and other lawyers had also provided assistance in preparing the report.
The Republican Bureau on Human Rights and Rule of Law was responsible for the coordination of work, for compiling and editing the Report.

The data of different NGOs was used in the present report; and the references to such sources of information are made throughout the text of the Report.

The Report covers most of rights recognized under the ICCPR. It contains the Chapters on Articles 2, 7, 8, 9, 14, 17, 18, 19 23, 24, 25, 26 and 27 of the ICCPR. Unfortunately, we could not cover all the articles of the ICCPR. Each chapter contains information on legislation and practical implementation of the relevant right; some are illustrated with examples of cases of human rights violations. The last Chapter of this Report contains the Recommendations. We believe it is important for the Government of Tajikistan to follow these recommendations in order to improve the Human Rights situation in the country.

Our aim, while preparing the Alternative Report, was to provide the members of the UN Human Rights Committee and all interested parties with the information on the implementation of the ICCPR that would complement the National Report. Our position often differs from the official one, and we hope that the data on legislation, practice, as well as the analysis of the situation and concert cases of human rights violations in Tajikistan would be useful for the experts of the Committee and will help to create a comprehensive and objective vision of the problems of the realization of civil and political rights in our country. As our data is complementary, we tried to avoid citing the general data stated in the National Report.

Speaking generally about Human Rights situation in Tajikistan, we would like to note some positive changes that took place during the last years with regard to the respect of certain rights such as:

- Reforms in the penitentiary system;
- Adoption of the policy towards restricting of application that, hopefully, will lead to abolishing death penalty. One of such steps is recently introduced moratorium on death penalty.
- For sure, the creation of the governmental institution dealing with the issues of implementation of international human rights obligations was a positive step as well;
- We would like also to note the recent ratification of another important Human Rights document – International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The main problems in the implementation of Human Rights are related to the use of torture, arbitrary deprivation of liberty, unfair trials, violations of main fundamental freedoms such as freedom of the expression and the freedom to manifest one's religion or beliefs. The reports provides detailed information on these issues.

We hope that the Alternative Report will contribute to the improvement of Human Rights situation in the Republic of Tajikistan.

ARTICLE 2

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

The article 10 of the Constitution of the Republic of Tajikistan stipulates: "generally accepted norms of international law, and the international treaties of the Republic of Tajikistan constitute an integral part of its legal system and have a priority over the national legislation of the Republic of Tajikistan." International documents are to be applied directly and in case of non-compliance of the norms of national legislation to the norms of international documents, the norms of international documents shall be applied.

For this reason, almost all national legislative acts provide for the obligation to conform to the norms of the international treaties ratified by the Republic of Tajikistan.

The UN Human Rights Committee has already adopted its Views with regard to three individual communications v Republic of Tajikistan. Nevertheless, the national legislation of the country still lacks the mechanisms to determine how the decisions of the committee should influence the re-examination of the decisions of the courts that have already taken effect.

On numerous occasions, the Constitutional Court of the Republic in its decisions made references to the norms of the International Covenant on Civil and Political Rights (ICCPR). But the judicial and law-enforcement practice illustrate the general tendency - when a contradiction between national and international norms arises, the authorities, courts and law-enforcement bodies give preferences to the national laws and bylaws. One of the reasons for that is the system of assessment of performance of the officials, judges, officers of the law-enforcement bodies. The criteria for performance are identified internally by relevant departments and institutions and do not include the respect of human rights as an indicator. In addition, the possibilities of citizens to have an impact on the activities of the authorities, courts and other state bodies are very limited and they continue to decrease as the control from the executive branch over the creation and activities of the courts is subsequently rising.

3. Each State Party to the present Covenant undertakes:

a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by person acting in an official capacity;

b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by legal system of the State, and to develop the possibilities for judicial remedy;

c) to ensure that the competent authorities shall enforce such remedies when granted.

Effectiveness of the remedies consists of several elements such as the accessibility of such remedies for individuals, competence of the administrative, judicial and public organs of human rights protection, as well as a possibility to enforce the decisions made by administrative, judicial and other organs for protection of human rights.

As for the access to remedies, the Constitution provides for the right of citizens of the Republic of Tajikistan to address a wide range of state bodies to request the protection of their rights and freedoms. But, the request in itself, unfortunately, does not mean that the violated rights and freedoms will be protected.

General judicial rules apply for the protection of human rights. The main shortcomings of judicial protection are related to the low effectiveness in enforcement of decisions of the courts. The problem of enforcement is particularly acute in cases where the State is ordered to pay some compensations or bear other forms of financial obligations.

The judicial remedies include the consideration of a case on its merits in the courts of first instance, cassation procedure (appeal against the decision of the courts of first instance) and the review procedure (on the verdicts and decisions that already entered into force.)

The review procedure can be initiated by the protest of the Prosecutor General and his deputies, and of the President of the Supreme Court and his deputies as provided for by article 375 of the Criminal Procedure Code of the Republic of Tajikistan. The legislation does not allow individual/his lawyer to directly apply for an initiation of the review procedure on his case.

Special procedures and bodies of human rights protection that exist in the Republic of Tajikistan, such as the Department of the Constitutional Guarantees of the Rights of Citizens under the Executive Apparatus of the Republic of Tajikistan do not completely adhere to the criteria of the effectiveness of remedies. Appeals to these bodies do not lead to the re-consideration of a case and do not impose any obligation on officials. Such bodies only have authority to request some other competent bodies to take some other action. For instance, they can appeal to the prosecutors asking them to initiate a criminal case or a review procedure on a case. Unfortunately, the practice of human rights organizations that tried to appeal to these bodies illustrated the ineffectiveness of the latter.

According to the information of the human rights organization, we can speak about lack of effective remedies in the Republic of Tajikistan at legislative, administrative and judicial levels.

Tajikistan accepted not only the obligations to accept the jurisdiction of the Human Rights Committee as provided for directly by the ICCPR but also to respect the Optional Protocol related to individual communications with regard to the violations of the rights recognized in ICCPR from the persons under Tajikistan's jurisdiction.

By now the UN Human Rights Committee considered on their merits three complaints against the Republic of Tajikistan and disclosed violations of human rights in these three cases – "Kurbanov v Tajikistan", "Saidov v Tajikistan" and "Khomidov v Tajikistan." In all three cases, the Committee disclosed violations of a right to fair trial, to the security of a person, to protection from unlawful and arbitrary detentions, and other rights and recommended Tajikistan provide the victims with effective remedies of human rights protection, and pay a compensation proportionate to the violation.

Still today, the Republic of Tajikistan did not undertake any action with regard to restoration of violated rights. Only a few people in the country know about the decisions of the Committee; the authorities and media do not disseminate such information. This situation leads to dangerous precedents, that judges get confirmation for an idea that the decisions of an international body whose competence was recognized by the state, are not mandatory for enforcement in practice. And together with these decisions, they do not want to apply other international acts, accepted standards.

ARTICLE 7[1]

No one shall be subjected to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Tajikistan, as a State Party to both ICCPR and the Convention against Torture, took obligations to adopt all necessary measures in order to prevent the use of torture in its territory. Nevertheless, torture is a serious problem in Tajikistan, and it is mostly used by the officers of law-enforcement bodies as a method disclosing crimes. The wide use of torture is due to certain shortcomings of the legislation, and the particularities of the organization of work of the law-enforcement bodies, procuratura (prosecutor's offices) and courts that stimulate the use of torture.

1. Lack of an appropriate definition of "torture" in the national legislation.

The definition of torture is given as a note to article 117 of the Criminal Code *(the crime's name is "istiazanie" (word in Russian language, very close in meaning to torture, cruelty, excruciate, torment)*. Nevertheless this definition does not correspond to the definition given in the international documents, particularly in article 1 of the Convention against Torture.

In the note to article 117 of the Criminal Code, torture is described as "causing physical or moral suffering for a purpose of forcing a person to confess or to do other actions against his will, or for a purpose of punishment or other". The given definition contains only two elements of international definition of "torture" – infliction of pain and suffering and existence of a specific purpose of such actions. The substantial deficiencies in the definition of article 117 of the Civil Code are the following: it does not contain provision for the possible participation of a public official. Although, according to the international treaties that Tajikistan is party to, the participation of a public official in a torture act (in a form of directly inflicting pain and suffering, instigating others to use torture or in a form of according consent or acquiescence) is a key element that distinguishes such a severe violation of human rights as torture from other assaults on physical integrity and security.

2. The Criminal Code of Tajikistan does not contain a specific article that would provide for a punishment for officials for using torture, cruel and degrading treatment.

As it was described above, the definition of torture is only given in article 117 of the Criminal Code. Only a private person can be subject to responsibility under article 117 as it does not refer to an "official." Persons acting in official capacities cannot be punished under article 117.

This does not mean that the criminal legislation of Tajikistan does not provide at all for the criminal responsibility of persons acting in official capacity for use of torture and cruel and degrading treatment. Such possibility is given by article 316 (abuse of power) and article 354 (extortion of testimonies by a person, conducting an inquiry, investigation or executing judicial power.)

The article 316 of the Criminal Code (abuse of power) provides for punishment of officials for crimes committed in the form of actions clearly exceeding their power and resulting in substantial violation of rights and lawful interests of citizens and organizations or of legally protected interests of society or state. Part 3 of this article provides for punishment for officials abusing their power by using violence or threats, or by using weapons or other special

[1] This article is based in the information provided by the Bureau on Human Rights and Rule of Law, the Collegium of Advocates (the Bar) of Sogd region and by defense lawyers.

equipment. Article 316 has a general character. On one hand, it gives the possibility to use article 316 for criminal prosecution of officials for committing acts of torture. On the other hand, article 316 lacks specific and clear characteristics of torture committed by an official as a criminal offense. The latter has a negative impact and results in a lack of understanding by judicial and other competent bodies that torture constitutes a gross violation of human rights.

Article 354 of the Criminal Code provides criminal responsibility for coercion to give testimonies by a person, conducting inquiry, investigation or executing judicial power. Part 2 of this article provides for the punishment of officials for coercing a person to give testimonies using cruelty *(izdevatelstva)* and violence. The content of said article is getting close to a definition of torture, inhuman and degrading treatment given in international treaties ratified by Tajikistan. The problem is that article 354 can be applied only in cases when the torture is committed by a person who has a status of an investigator, inquiry official *(doznavatel)*, prosecutor or a judge. In practice, torture (including acts of torture aimed at extorting testimonies) is often applied by the officers of law-enforcement bodies who do not have the above-mentioned status. Moreover, article 354 limits the range of possible subjects of torture acts and the aims of these acts. This article provides for punishment only for eliciting confessions from a suspect,, testimonies from a victim or a witness, or a report from an expert. The use of torture and cruel treatment on other people aimed at getting information about a crime and its evidences/traces, and use of torture with other aims that are not listed in article 354 is not punishable.

3. Scope of use of torture and cruel and degrading treatment in Tajikistan.

It is a challenge to identify the real scope of the use of torture and cruel and degrading treatment in Tajikistan. There are no official statistics on the number of complaints about the use of torture received by state bodies, the number of criminal cases initiated following such complaints, or on the number of persons against whom criminal proceedings were initiated on charges of using torture, cruel and degrading treatment. Prosecutors' offices and other competent departments responsible for statistics collect and disaggregate data on the basis of the articles of the Criminal Code. Due to the lack of a specific article on torture, the data on torture is not collected, and no statistics exist.

Some indirect conclusions can be made based on the statistical data on certain crimes such as:
Article 314 (abuse of powers); article 316 (excess of powers); article 317 (misappropriation of power of an official); article 322 (neglect of duty); article 323 (counterfeit by an official); article (obstruction of justice, inquiry or investigation); article 348 (bringing to criminal responsibility a knowingly innocent person); article 349 (imposing knowingly illegal sentence, decision or other judicial act), article 354 (coercion to give testimonies by a person, conducting inquiry, investigation or executing judicial power); article 356 (threats or violence related to the administration of justice or conducting an inquiry or investigation); article 358 (unlawful arrest or detention); article 359 (falsification of evidence); article 360 (unlawful relief from criminal responsibility.)

According to the data of the Office of Prosecutor General of Tajikistan:

The criminal proceedings initiated under the following articles of the Criminal Code	2000 г		2001 г		2002 г		2003 г	
	By the Prosecutors' offices	By the investigators of the Ministry of Interior	By the Prosecutors' offices	By the investigators of the Ministry of Interior	By the Prosecutors' offices	By the investigators of the Ministry of Interior	By the Prosecutors' offices	By the investigators of the Ministry of Interior
314-317, 322, 323	123 cases in relation to 145 persons	11 cases in relation to 11 persons	95 cases in relation to 123 persons	6 cases in relation to 5 persons	104 cases in relation to 148 persons	2 cases in relation to 2 persons	125 cases in relation to 152 persons	4 cases in relation to 5 persons
345, 348, 349, 354, 356, 357, 358, 359, 360	1 case in relation to 1 person.	No data available	4 cases in relation to 6 persons	No data availabl e	7 cases in relation to 9 persons	No data available	7 cases in relation to 8 persons	2 cases in relation to 8 persons

One shall take into account that the statistical data on the listed above articles is related not only to the cases of torture registered by the state bodies but also to other official offenses not related to cruel treatment.

During 2000-2005, the investigation departments of the Ministry of Security of the Republic of Tajikistan initiated criminal proceedings against 13 police officers (2000- 3 persons, 2001 –1 person, 2004 – 4 persons, 2004 – 3 persons)

As it can be seen from official data, a small number of crimes of official malfeasance is registered. Nevertheless, there are serious reasons to believe that this data does not illustrate the real scope of the use of torture. This phenomenon is due to the fact that state bodies are reluctant to register in an appropriate way all the complaints on the use of torture and the fear of the people to address complaints to official bodies. The following may confirm this conclusion:

According to the data of the Ministry of Health and the National Center of the Forensic Medical Expertise, the number of people who applied to health professionals due to bodily injuries inflicted by officers of law-enforcement bodies was as follows: 2001- 58 persons; 2002 – 11 persons; 2003 – 89 persons.

These figures are already different from, for example, data of the Ministry of Security on the number of police officers brought to criminal responsibility due to the abuse of power.

Information of NGOs and international organizations also differs considerably from the official data. During the period of 2002-2004, the Bureau on Human Rights and Rule of Law registered 23 complaints on use of torture by law-enforcement bodies; OSCE Center in Dushanbe registered 77 complaints, UN Office on Peace Building in Tajikistan – 19 complaints; Collegiums of advocates of the Sogd region – more than 25 complaints.

4. Torture as a mean to solve crimes: practice and causes

The data on the use of torture collected by NGOs shows that the use of torture is most widespread in the cells of the preliminary investigation *(abbreviation in Russian – KPZ*) situated in the local departments of interior and in most cases is applied by operational investigative officers of law-enforcement bodies of the interior. Arrested persons are subjected to torture such as beating with hands and legs, using different objects to beat different parts of body; use of electroshock, attachment by handcuffs; threats to the members of family; some arrested also were subjected to sexual torture (rape by different objects.)

As a general rule, torture is used against suspects accused of crimes in order to extort confessions from them, but some cases of torture applied to the relatives of suspects and accused persons and to witnesses.

Some examples: M. B. was arrested as a suspect in committing crimes. He was arrested on October 10, 2000. He suffered from torture from the first days of his arrest (as a result he has got a traumatic brain injury and his toenails were ripped out). On October 12, 2000 the father of M. B. was arrested and held in a cell of preliminary detention for 20 days. After physical and psychological pressure he had to sign the confession[2].

On August 12, 2001, officers from the Department of the Ministry of the Interior in charge of fighting organized crime came to the home of U. I. in order to arrest him. U. I. was not at home, so they took his mother to the police station and kept her in detention for two days (till August 14, 2001.) She was released only after I. himself was arrested[3]. S. A. was arrested as a suspect in committing crimes. Torture was used against him. The officers were putting a board of plywood against the wall and in-run were beating A. against this board on and about his chest. His brothers were arrested as well and were kept in the detention center of the Ministry of the Interior for more than one month. A. could no longer resist all of this physical and psychological violence and gave a confession[4].

The use of torture is the most widespread during so-called operational search actions (OSA). OSA's are aimed at collecting information about crimes and those who commit crimes. By itself, such information cannot serve as evidence, but it helps law-enforcement bodies to find evidence. The law-enforcement officers hold so-called "operative conversations" and during such "conversation" a person can be subjected to torture aimed at getting data about others who participated in committing a crime, about possible traces of a crime, about the location of property that was obtained in a criminal way and other information. After such information is obtained, the law-enforcement officers conduct official investigative actions (search,

[2] A communication related to this case was submitted to the UN Human Rights Committee in accordance with the Optional Protocol procedure, and it was registered by the Committee under the number № 1042/2001

[3] A communication related to this case was submitted to the UN Human Rights Committee in accordance with the Optional Protocol procedure, and it was registered by the Committee under the number № 1276/2004

[4] A communication related to this case was submitted to the UN Human Rights Committee in accordance with the Optional Protocol procedure, and it was registered by the Committee under the number №.№ 1121/2002

interrogation and other) within the bounds of procedural legislation that result in getting evidence to be used during the court hearings.

OSA's are held secretly. The methods of OSA are secret in themselves, and they are not subject to judicial review. The Criminal Procedure law does not regulate issues related to OSA's, and a person - subject to an OSA – does not have a right to legal counsel and other guarantees that a suspect or accused person are provided by the law.

Torture is also used in order to elicit confessions during different stages of the criminal procedure regulated by the Criminal Procedure Code of the Republic of Tajikistan. Torture, cruel and degrading treatment aimed at forcing someone to give testimonies/make confession is mostly used during the first hours of detention[5]. This is due to the fact that during the first hours an arrested person does not have a lawyer, and his/her relatives are not informed about his/her arrest.

Such situations are possible due to the shortcomings of legislation that lacks guarantees of protection for an arrested person and due to the general practice of neglect of the rights of arrested persons.

First, according to the Criminal Procedure Code of Tajikistan a body of inquiry or investigators does not have an obligation to make an examination of an arrested person and described his general state of health on the moment of arrest. Lacking such clauses in legislation gives the possibility for law-enforcement officers who used torture to escape any responsibility for their acts by claiming that a person had injuries prior to his/her arrest.

Second, the criminal legislation of Tajikistan does not require providing an arrested person with right to have legal counsel from the moment of his de facto arrest. According to article 49 of the Criminal Procedure Code a "defense lawyer is admitted to the participation in the case from the moment of bringing charges. In case of an arrest of a person who is suspected of committing a crime, or in case of applying the pre-trial detention as a measure of restriction – a defense counsel participates from the moment of announcement of an arrest record or of an order on pre-trial detention, *but not later than 24 (twenty-four) hours after the arrest.*

So, the legislation creates the dependence of the right to legal council on the writing by law-enforcement bodies of an arrest record. The existing lack of control over timely writing such arrest records is contributing to the problem. Numerous cases are known where the arrest record was written several days after the de-facto arrest, and during all those days the arrested person had no access to a lawyer. An example – a minor S. M. was arrested on August 7, 2001 and his arrest record was written only on August 11, 2001. A lawyer was refused access to him, as were his relatives. He was subjected to torture (beaten, tortured by electric current, deprived of sleep, and deprived of food for 3 days). Under torture he gave testimony against himself. Law-enforcement officers brought him to the scene of the crime and showed him what to do during official investigation actions (testimonies at the place where the crime was committed.) The defense lawyer was denied access to the accused until August 14, 2001, a week after the arrest took place[6].

Third, the law limits the contact of an arrested person with a lawyer even after the record of arrest is executed. According to article 424 (2) of the Criminal Procedure Code, a lawyer can

[5] Data from the Monitoring on death penalty in the Republic of Tajikistan. Republican Bureau on Human Rights and Rule of Law.

[6] A communication related to this case was submitted to the UN Human Rights Committee in accordance with the Optional Protocol procedure.

meet his client only if he has a written attestation from a body or person who is responsible for the given case (an inquiry officer (doznavatel), an investigator or a judge) that the lawyer admitted to participation in the case. A lawyer is not given access to an arrested person without such attestation even if (s)he has documents that confirm that the arrested person had chosen this lawyer as his/her defense counsel. So, an official who is responsible for the investigation of the case has discretion in giving permission for meetings between an arrested person and his/her defense lawyer or in prohibiting such meetings completely.

Inquiry officers, investigators and prosecutors to whom the law gives factual control over the meetings of a suspect/accused person with his/her defense lawyer and relatives, use these powers to pressure a suspect/accused person and also to hide the fact that torture was used during the investigation. Incommunicado detention is often applied in the course of criminal investigations. Example – M. B. was arrested and was kept in absolute isolation for 40 days. His relatives and his lawyer were not given access to him. Torture was used during this period, and as a result of suffering he had to sign a confession of his guilt.[7] Brothers, D. and S. N. were arrested on February 19, 2000. A lawyer was allowed to meet with D. N. only on January 4, 2001, and with S. N. only in August 2000. For several months their relatives were not allowed to meet them, could not receive information about their place of detention, could not give them any food (and other first need) parcels. The wife of D. N. was given official permission to see her husband only in September 2000. Brothers N. were sentenced to death in May 2001.[8]

Fourth, the legislation lacks norms that would provide for a right to a lawyer for a witness in a criminal case. This also contributed to the use of torture. There is a widespread practice of calling a person as a witness, and then using torture to force him/her to give testimony against himself/herself. Based on such confession obtained under torture, the criminal proceedings are installed and this person is already qualified as an accused. One example - on April 28, 2004 Ms Elena Kim was invited to come to the prosecutor's office of Sogh region as a witness on a crime. She came with a lawyer, but the lawyer was not allowed to participate in the interrogation as Ms Kim had a status of a witness. On the same day she was arrested and transferred to the Department of Interior of city of Khudjand. On May 1, 2004 her lawyer was informed that Ms Kim refused his services. The lawyer had no contacts with Ms Kim from April 28 to May 1, 2004. Elena Kim was then brought to criminal responsibility as a accomplice to a crime and sentenced to 6 years of deprivation of liberty.[9]

The legislation provides for an obligation to give to any arrested person information about his/her rights, such as a right to a lawyer, including a right to an "appointed" (paid by state) lawyer. The official form of a arrest record does not contain information about concrete rights of an arrested person – That the investigator should inform an arrested person about. As a result, the obligation to inform a person about his/her rights is often neglected. Arrested persons just simply sign the point of the arrest record stating "I became familiar with the report of arrest. I was informed about the rights and obligations of arrested persons as provided for by article 412 of the Criminal Procedure Code."

The administration of places of detention is responsible according to the norms of Criminal Procedure Code to maintain order in these places. The administrations of detention places shall

[7] A communication related to this case was submitted to the UN Human Rights Committee in accordance with the Optional Protocol procedure, and it was registered by the Committee under the number № 1042/2001

[8] A communication related to this case was submitted to the UN Human Rights Committee in accordance with the Optional Protocol procedure, and it was registered by the Committee under the number № 1044/2002. Brothers N. were executed in June 2002.

[9] According to the data of Collegium of Advocates of Sogh region.

respect the regulation on the short-term detention of individuals suspected of committing crimes and the regulation on pre-trial detention. The arrested persons do not have access to these regulations. Answers given by the administrations of detention places to the requests of arrested persons and their lawyers to provide these regulations stated that these regulations have not yet been developed, and that the administration of the Isolators of Temporary Detention *(Abbreviation in Russian – IVS)* and of Pre-Trial Detention Centers *(abbreviation in Russian – SIZO)* use internal instructions that are for internal use only.

This leads to the situation that arrested persons and persons held in custody cannot learn about the restrictions on power of the officials of IVS and CIZO that in practice give unlimited power to officials. Guarantees provided by the State to arrested and detained people for their protection from torture and other cruel and degrading treatment become sole declarations.

5. Possibility to use evidences obtained under torture for court's judgment.

Torture is used in order to elicit confessions due to the fact that the courts continue to accept evidence obtained through torture even if an accused or a witness gives testimony about the use of torture. Certain norms of the Criminal Procedure Code facilitate this.

In particular, article 284 of the Criminal Procedure Code stipulates that "Disclosure of evidence given by the defendant during the inquiry and pre-trial investigation, as well as listening of the audio records enclosed with the record of an interrogation and his/her testimonies can take place in the following cases:

1) When serious contradictions exist between these testimonies and the testimonies given during the court hearing;
2) When a defendant refuses to give testimonies in court;
3) In case of trial in absentia.

It is evident, that in case when a defendant refuses his/her testimonies given during the pre-trial investigation claiming that they were obtained through torture, the disclosure of these testimonies will not contribute to a legal sentence of a court especially in a case if the court will use this evidence while adjudicating the case.

If a defendant refuses his previous testimonies claiming that they have been obtained through torture, the judges shall apply the Regulation of the Plenum of Supreme Court "On the courts' sentences" of June 4, 1992 that requires a judge to establish the reasons of the refusal of testimonies given during the pre-trial investigation and to verify the allegations of the use of torture.

Nevertheless, the majority of judges do not take into account such declarations of a defendant and his/her lawyer indicating that a defendant could not prove the use of torture. Doing so the judges switch the burden of proof in regard to the use of torture to defendants (victims of torture) themselves. This conclusion is drawn based on the results of monitoring of the practice of capital punishment in Tajikistan [10] and analysis of the complaints received by non-governmental organizations. Some examples – S. A. during the court hearing on his case testified that he was tortured and showed his injuries caused by his torture (burst of blood-vessels on his legs, he could not move without help of others, needed support from both sides in order to move.) During the court hearing his mother showed his clothes that she received from CIZO, and

[10] This monitoring was conducted by the Republican Bureau on Human Rights and Rule of Law during the period from October 2003 to December 2004.

the clothes had blood all over them. Nevertheless, the judge did not react to these testimonies and refused the request of the defendant to conduct a forensic medical examination. Sh. Aliev was sentenced to 8 years of imprisonment; the upper instances courts decreased the sentences to 3 years. At present, S. A. is disabled due to the injuries of his legs.[11]

During the court hearing of Z. S., the court refused to order a forensic medical examination, although the defendant's lawyer declared that the defendant's confession was obtained through torture and showed in the court room the traces of beating and black lines on the back of the defendant. The court did not take into account the declaration of the defendant that evidence was obtained through torture and sentenced Z. S. to death.[12]

According to article 15 of the Criminal Procedure Code, it is prohibited to use violence, threats and other unlawful methods in order to obtain the testimony of an accused or other persons. But the criminal procedure legislation does not contain any norms that would provide for voiding evidence obtained through the use of violence and threats and for such evidence not to be taken into account during the court hearing and adjudication on the case. So, an imperative requirement of the Convention against Torture is not being respected.

Example – K. S. was detained for 15 days for committing an administrative offense. On the second day in detention he was interrogated in relation to a murder and a prosecutor gave a sanction ordering him into pre-trial detention. S. claimed that he was forced to give testimony against himself – he was tortured by electroshock. S. now has a dependency on drugs that officers of the Crime Investigation Department administered to him in order to obtain his confession. The court of first instance established that the confession of S. does not correspond to the circumstances of the case. Instead of dismissing the case, the judge ordered additional investigation. By now, S. has been kept for more than 2 years in detention.[13]

6. Lack of effective investigation of complaints on the use of torture.

As already mentioned, in the most cases, torture is used in relation to suspects and accused persons. The lack of access of suspect and accused persons to timely medical examination and lack of access to any independent expertise are some of most important problems related to the investigation of the allegations of torture. These possibilities are restricted by the legislation.

For instance, article 125 of the Criminal Procedure Code stipulates that "an investigator is not allowed to refuse a suspect, accused or his/her defense counsel in an interrogation of witnesses, holding an examination or other investigative actions aimed at collecting evidences in case if the circumstances that they ask to establish may be substantially important for the case." Nevertheless, this article does not establish the delays in which such requests shall be decided. If an accused or his/her lawyer request a forensic medical examination, an investigator is provided with discretion to decide upon the delays when such examination would be held. The later the examination is held, the harder it is to prove the use of violence. Often, the investigators are involved in the use of torture and they try to delay as much as possible before holding an examination and by this, eliminate the traces of torture.

The legislation also lacks norms that would oblige an investigator an inquiry officer or a judge to ensure that a detained person has access to a doctor without delay (for example within 24 hours) if a complaint on the use of violence was presented by this person. Such a complaint may be sent

[11] According to the data of Collegium of Advocates of Sogh region.
[12] A communication related to this case was submitted to the UN Human Rights Committee in accordance with the Optional Protocol procedure, and it was registered by the Committee under the number № 1200/2003
[13] According to the data of Collegium of Advocates of Sogh region.

to the prosecutor or to the chief of the detention center (SIZO or IVS.) There is no procedure for independent medical examination by request of an accused or his/her lawyer. Lack of such protective norms in the criminal procedure legislation leads to the fact that it is almost impossible to prove the use of torture.

The legislation of Tajikistan provides for possibility of the citizens to apply to different state bodies to request the protection of their rights. Such possibilities are provided by the law "On the applications of citizens" and by articles 3 and 12 of the Law on Procuratura (prosecutors' offices.)

The national norms establish a procedure of the registration of complaints of people kept in detention. But the law does not provide for notification of a detained person that his/her complaint was received by the body s(he) addressed it to. An applicant shall only be notified about the decision taken on the basis of his/her complaint – an initiation of a criminal proceedings (if the facts he describes were verified and confirmed) or a refusal to start such proceedings. In reality most of the claimants are not notified at all about the results of verification, or the notification on the decision does not mention the reasons that lead to this decision and does not describe the actions taken in order to verify the allegations presented in the complaint.

Legislation identifies the competent bodies entrusted to examine the complaints of citizens. These bodies include courts, prosecutors' offices and services of internal security of the Ministry of Interior and Ministry of the Security. In general, it is the competence of the prosecutors' offices to conduct investigations on the cases of use of torture.

In accordance with the rules of investigative jurisdiction, the prosecutor's office of the same district where concerned policemen work, shall conduct the verification and investigation on the complaints on the use of torture. It is necessary to take into account the prosecutors work in close contact with the police on the matter of solving crimes. There are strong professional and often personal links between prosecutors and policemen within same district. And often the prosecutors are unable to conduct an objective and efficient investigation on torture allegations.

Lack of material base and equipment of the prosecutors offices as well as general lack of prosecutors staff contribute to the ineffectiveness of the investigation on torture complaints. According to the statistical data in Tajikistan there are about 960 prosecutors' staff (who execute a number of functions such as general control over the respect of laws, conducting investigations, appearing as an indictor in the courts and others.) To compare, there are about 37 thousands officers of the Ministry of Interior.

Often, the local prosecutor's offices do not have the freedom or resources to conduct investigations and searches that are needed to discover crimes, including torture. And prosecutors ask local level police to conduct such investigations. As a result, the collection of evidences in relation to use of torture by a policeman is conducted by his colleagues at office and sometimes by himself.

So, the prosecutor's offices on local (district) level cannot be identified as independent instance for holding the investigations on the complaints with allegations to use of torture. To improve this situation, the investigation of such complaints should be assigned to the prosecutor's offices of higher instances, and the search actions should be conducted by the structures of internal security of the Ministry of Interior and the Ministry of Security.

Another problem is related to the protection of plaintiffs in torture cases and of witnesses who give evidences against officials. The Criminal Procedure code does not guarantee adequate protection for victims of torture, witnesses and members of their families. Thus, often people who complained to the prosecutor's offices about the use of torture or their relatives are subjected to pressure, including violence. Especially hard is the situation of people in detention who complain about the use of torture by the administration. Prisoners are kept at the same place; they are not transferred to another place of detention during the investigation on the subject of the complaint. So, they can be subjected to additional pressure and persecution from those officials, against whom they presented their complaints.

Lack of programs on the protection of plaintiffs and witnesses of torture results in a lack of effeteness of investigations on the matter – due to persecution, the plaintiffs often have to dismiss their complaints. Moreover, the threat of persecution is a main reason why victims of torture do not complain to the state bodies about it. Thus, on January 12, 2001, D. K. was arrested as a suspect in committing the murder of two policemen and he was kept in the Isolator of Temporary Detention (a short-term detention place of the Ministry of Interior, where a person can be kept for maximum of 72 hours) till the February 6, 2001. During this period, the policemen systematically beat him, poured cold water on him and tortured him with electroshock. The policemen could not prove his implication in this murder, and started to accuse him in commitment of three thefts. The father of K. appealed to the Service of internal security of the Ministry of Interior. An internal investigation was held, and K. was released. Criminal proceedings (on charges under articles 316 and 358 of the Criminal Code) were initiated against policemen involved in K.'s case. The policemen started to follow and put pressure on K. and his relatives. Several times they have beaten K., his cousins, his father (beating is confirmed by the reports of forensic medical examination), conducted unauthorized searches of their dwellings. The persecution lasted for one year, and the policemen forced the father of K. to dismiss his complain regarding the torture of his son. On November 28, 2002 K. was arrested for the second time on the same charges. He confessed under torture. K. was sentenced to 9 years of imprisonment.[14]

16. Lack of independent control over the law-enforcement bodies results in superficial and often only "formal investigation" of cases of torture of detained persons, and together with the neglect that the courts show in relation to the declarations on the use of torture, this contributes to the established impunity of those who use torture, corporal punishment, and cruel and degrading treatment. Existing programs of training and qualifications upgrade of the officers of law-enforcement bodies do not pay adequate attention to the issues of personal security and protection from torture and cruel and degrading treatment. Lack of appropriate training also contributes in the maintaining the status quo with the widespread use of torture by law-enforcement bodies.

[14] A communication related to this case was submitted to the UN Human Rights Committee in accordance with the Optional Protocol procedure, and it was registered by the Committee under the number.№1096/2002

ARTICLE 8

Nobody must be kept in slavery; slavery and labor trafficking are strictly forbidden in all their kinds.

The legislation of RT rather recently has acquired a full conformity to the given norm of ICCPR. In 2004 was accepted the law focuses on prevention of labor trafficking. Given innovation in legislation of RT has been proved by an urgency of people trafficking, issue and absence of sufficient measures of prevention, suppression, and punishment of similar offences. However, it should be noted that according to confession of department of internal affairs' employees of Sugd area in practice given innovation has not been conceived due or any significant influence on an issue. It is quit possible that it is connected with short period of applying in practice the new norm of legislation.
Referring to the speech of department of internal affair's employee struggle against people trafficking seems to be not effective; the reason is that these structures don't have sufficient means and required technical opportunities. People due to some reasons (stereotypes, mentality, and tradition) don't wish to declare about the similar facts[15].

The role of NGOs and organizations on human rights defense, as whole can't remain unappreciated in struggle against people trafficking within territory of RT. Beginning from 1998-1999, they have engaged in studies of issue focuses on people trafficking. At the same time governmental structures and also mass media sharply criticized local NGOs, practically accusing them in humiliation of honor and dignity of Tajik women and girls. Thus, in a newspaper called "Tojikoni Dynio" addressing to the head of female NGO "Chashmai Hayot" there is an opinion that she is the head of mafia grouping. Only in 2002 the situation began to vary radically in the best side. It has been commemorated by the joint action of governmental structures and local NGOs, under the support of international organizations focus on prevention of trafficking. One of the cooperative efforts has become an informational campaign developed as mass media and at the same time places of a national congestion, mahalas by the means of newsletters and brochures.

.

Nobody must be coerced to forced labor or obligatory labor

The article 35 constitution of RT strictly prohibits being involved in forced labor. In point 3 "c" article 8, of ICCPR is clearly fixed that obligatory labor is not considered to be work accomplishing by prisoner according to the court's verdict; work, related to military service; service caused by state of emergency or natural disaster; work is considered to be civilian duty. All above mentioned except (work is considered to be civilian duty) are included in article 8 of Labor Code, where has been also mentioned an interdiction of forced labor. However, there is a practice of using a forced labor in Tajikistan. The forced labor is realized either on initiative of government or its separate organs and officials or on initiative of individuals.

The practice of forced labor on initiative of government or its separate organs and officials takes place during the season of cotton-picking, principally in Sugd and Khatlon area of RT[16] and has a great importance. The reason is that the cotton is considered to be strategically important raw material of RT.

The forced labor issue is repeatedly considered by government or its separate organs or officials; the monitoring studies were carried out by local non-governmental organizations, and also IOM and ICG.

[15] The information has been received by an interview with HR defenders of Sugd area of RT
[16] The largest cotton-sowing region of RT

The forced cotton-picking involves pupils and students, employees of governmental enterprises (social workers, doctors, teachers and etc) and in addition commercial structures and private entrepreneurs, absolutely not having a relation towards agriculture.

There are different ways of coercion, they depend on which dependence from government or officials are group of people and organizations

There are no official governmental documents confirming coercion of all involved people and organizations in cotton picking. It was also confirmed by auditing commission of Hukumat activity (in particular Sugd area) according to legislation of RT conducted by Ministry of Justice of RT on March, 2005[17]

At the same time mass media spread an information that majority of population are taken out to cotton-picking by their own will. Really, people and organizations are forced to write a collective voluntary wish for participation in cotton-picking campaign and then they are coerced to accomplish their 'voluntary' desire.

Referring to the speech of administration's employees, the chairman of Sugd oblast who wished to be unknown the mechanism of coercion follows as:
a) To principals of institutions of higher education, governmental and private enterprises, campaigns of Sugd area in verbal form is given an instruction focuses on how much people, in what period and where must be taken out for cotton-picking.
b) Then the principals of institution of higher education, governmental and private enterprises and campaigns are forced by trade union or representatives of organs and subordinate to write a collective statement with the request or requirement focuses on solution and rendering an assistance to them, on participation in cotton-picking campaign.
c) Subsequently, in a future students, doctors, teachers, builders, radio and television workers become 'cotton slaves'[18].

For students of institutions of higher education in a case of refusal from taking part in agricultural functions[19] are used the following punishments a) *Dismissal from institution of higher education;* b) *Paying a fine, minimum 150-200 somoni which constitutes 21-30 minimum living wage.*
According to above mentioned conditions it was impossible for majority of students to refuse from participating in cotton-picking campaign of 2004, but it has been proved to be comprehensible only for the students who have very respectful parents having high position in governmental structures or wide financial investment in their possession.

It should be mentioned that practice of forced labor is connected with the following human right and civilian violation of RT, which have been listed below and in addition are given examples by forced students to cotton-picking in 2004.

A. Forced students were working 8-10 hours without determined official days off according to the working schedule or holidays, it means that actually students were engaged in work from 56 till 70 hours a week..

[17] By an interview with employee of Ministry of Justice of RT
[18] Given formulation was applied to students who were taken out to cotton-picking in a newspaper 'Asia Plus'
[19] Here and among other reports on "Monitoring of forced labor among students of Institution of Higher Education in Sugd area during cotton-picking campaign in 2004" has been conducted a coalition of youth NGOs in Sugd area on September- November, 2004

B. The cotton-picking is not payable almost for third part of students and for other rest of people are paid with a delay and deduction of determined payment for nutrition at the rate of 10 dirams (0,003$) for 1kg of cotton

.

.

The practice of involvement to forced labor which is realized by children's parents or their trustees is widely spread among children in rural areas and remote regions.

The issue of forced children by parents or their trustees is researched by local NGOs, and is being made every effort for eliminating of given issue.

The age of children who are being coerced by forced labor composes from age 5 to 16.

There are different ways of forced labor which are used by parents or trustees. They are following as; playing with childish feeling and weak child's interest towards education and up to threat and using of physical punishment by parents or their trustees.

The main places where children work are; markets, warehouses, subsidiaries and huge farms. The ways of labor which children are forced by their children or trustees are considered to be different but more widely spread are following:

- Conductors in mini buses and buses (more preferable is given to boys)
- Carriers on markets, warehouses, and constructions;
- Prostitution and begging;
- Seasonal agricultural works.

ARTICLE 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Paragraph 1 of article 9 stipulates that the national legislation shall establish clear and concrete procedures for arrest and detention.

The norms of existing national legislation have serious deficiencies that contribute to numerous violations of human rights during arrest and detention.

The most widespread violations of human rights during arrest and detention include:

1. The law does not have provisions that the time of de facto arrest of a person should be established. And the practice shows that several hours or even days can pass from the time of factual arrest until the moment when the arrest record is executed.

The Bureau on Human Rights and Rule of Law registered a great number of cases where such violation took place. Thus, Mr U. I. was arrested on August 4, 2001. The record of his arrest was executed only on August 23, 2001, 19 days after de facto arrest. During this period he was tortured in order to coerce him to confess: his lawyer and relatives were not allowed to meet with him. When he was being transferred to the Isolator of Temporary Detention (IVS), he was forced to tell a doctor that he was not beaten in order to get a medical certificate needed for transfer to IVS.[20]

Such violations are widespread. When the victims complain to the prosecutors and make statements in courts, the courts do not take adequate measures.

Such violations are possible due first of all to the fact that Criminal Procedure Code in force is from 1961. Although this law was amended several times, it still does not correspond to the requirements of article 9 of the ICCPR.

Thus, article 412 (4) of the Criminal Procedure Code establishes the responsibility of a body of inquiry or an investigator to execute an arrest record in every case of an arrest of a suspect. Such record shall indicate the grounds for arrest, day and hour, month and year, place of the arrest, explanations provided by the arrested person and the time when the record was executed. The record shall be signed by the person who executed it and by the arrested person.

The time in detention of a suspect is counted from the time when this person was brought before the investigator or the body of inquiry. In a case where a person is arrested on the basis of an arrest warrant issued by the body of inquiry or an investigator, the time is counted from the moment of de facto arrest.

Article 412 (4) does not indicate the delay for executing an arrest record to be counted from the moment of de-facto arrest. It only states that the arrest record shall be executed from the moment when a suspect is brought before an investigator, to the body of inquiry or before a prosecutor. By the letter of the law, one may understand that a person can be arrested and detained for an unlimited period of time before being brought before officials. During the time of such unlawful detention any methods of interrogation may be applied.

[20] A communication related to this case was submitted to the UN Human Rights Committee in accordance with the Optional Protocol procedure

Law-enforcement officers violate the rights of arrested persons using this gap in the law. In particular, the right to a legal counsel is constantly violated. According to the Constitution and the Criminal Procedure Code, a lawyer may take part in a case from the moment of arrest. The moment of arrest is determined by an arrest record that as a general rule does not correspond to the real time of the arrest. The problems regarding the right to legal council are described in detail in the section of this report dealing with article 14 of the ICCPR.

2. The legislation of Tajikistan fails to provide for a exhaustive list of the grounds for arrest.

The grounds for arrest of a suspect include (according to article 412 (3) of the Criminal procedure Code):

- When a person is arrested in a moment of committing a crime or immediately after he/she committed it;
- When the eye-witnesses of a crime, including the victims would directly indicate the person as the one who committed crime;
- When the evident traces of a crime are found on a suspect, his/her clothes, the objects (s)he holds, or in his/her dwelling.

If some other data provides ground to suspect a person in committing a crime, (s)he can be arrested only if (s)he had attempted a flight, if (s)he has no permanent residence, or when his/her identity has not been established.

The grounds for ordering pre-trial detention as a restriction measure are the following:

- Risk of flight of an accused from the inquiry actions, investigation or court; or
- An accused can put obstacles for the establishment of the truth in a criminal case; or
- An accused will commit criminal actions; and also
- In order to enforce the sentence of the court (art 82 of the Criminal procedure Code)

Article 90 (2) also provides for possibility to apply pre-trial detention only on the ground of the gravity of an offense (grave and very grave crimes).

Defense lawyers and lawyers from NGOs share the opinion that in numerous cases the investigation officers and prosecutors use only the gravity of crime as a ground for ordering measures of restriction and do not indicate any other grounds. This is particularly unacceptable in case when pre-trial detention is ordered.

3. The legislation fails to limit the time in detention when the criminal case has already been transferred to the court. There is no legal act that would concern detention for the period from the moment when a court receives a case and until the final judgment on this case. The situation arises when a sanction for pre-trial detention expires and no new measures of restriction are officially selected but the person is still kept in detention A person can be in such a situation for many days, weeks or even months.

According to legislation, in certain criminal cases participation of a defense lawyer is mandatory. The judges do not put a case in a schedule for hearings unless a defendant in such case has a lawyer. If a person did not choose (and pay) his/her lawyer, a lawyer “by appointment” (paid by state) shall be provided.
In the Gorno-Badakhshan Autonomous Oblast (province), for about 200,000 inhabitants, there is only one lawyer of the National Collegium of Advocates. There are cases when judges start

hearings on a case 5-6 months after they received the case file, and all this time the accused is detained

4. The legislation fails to regulate the issue of detention during trial. The prosecutors do not have competence to decide upon detention after the case file is sent to a court. When a judge receives a case, (s)he is also deciding if the pre-trial detention was ordered on appropriate grounds. Nevertheless, the judges do not consider the issue if the detention is still needed and do not re-consider if the grounds for keeping a person in custody still exist. This gap in legislation leads to a violation of presumption of "liberty before trial."

5. The issue of the notification of relatives about arrest is also of great concern. Article 412 (6) of the Criminal Procedure Code establishes that a body of inquiry or an investigator who arrested a suspect shall notify his/her family. Notification of parents or legal guardians of a minor is mandatory. But the legislation fails to identify any time delays for notification, even in cases of minors.

Another issue of concern is that art 412 (6) establishes that a family of a person who is arrested as a suspect in committing a grave crime is notified about his/her arrest "if it will not obstruct to establishment of the truth on the criminal case." An investigator has discretion to decide whether the notification would "obstruct establishment of the truth." There are no time limits for such "obstruction," and no possibility to appeal such decisions. Although the notification of family is crucial for a detainee not only in order to keep contact with his/her family, but also in order to get a qualified lawyer with the help of family, the Tajik legislation contains shortcomings that are widely used by law-enforcement bodies against the interests of arrested persons.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

As a general rule, investigation bodies do not inform arrested persons of the reasons for their arrest and about the charges against them.

One of the reasons for this situation is the delay between the real time of arrest and the moment when official arrest record is executed.

The Criminal Procedure Code of Tajikistan leaves room for applying pre-trial detention as a measure of restriction even before the charges are being brought against the person. According to the article 83, a measure of restriction can be applied in exceptional cases to a suspect before the charges are brought against him/her. In such cases the charges shall be brought no later than 10 days after the moment when the measure of restriction was imposed. If the charges were not brought within this delay, the measure of restriction shall be cancelled.

Numerous concerns arise around this article: first, the law fails to provide any explanation on what kind of cases could be identified as "exceptional", and it leaves room for free interpretation by the investigators;

Second, a suspect does not know what the charges against him/her are for a considerable period of time. If we sum up all the legal delays from the moment of arrest till the information of charges, we could see the following schema:

Short-term (temporary)	Bringing the charges	Exceptional cases of detention

detention		without bringing the charges
24 hours (one day)	48 hours (two days)	10 days
A prosecutor shall be informed about the arrest	A prosecutor gives sanction for the pre-trial detention	A measure of restriction can be imposed without bringing the charges against the suspect. The prosecutor shall bring the charges during this period of time.

Thus, the legislation provides for the possibility that a person would not have information about the charges against him/her for up to 13 days. And this without counting additional time in detention (some hours or days) between a de facto arrest and the moment when the official arrest record was executed.

Example – U. I. was arrested on August 14, 2001. His arrest record was executed 19 days later (On August 23, 2001.) On August 26, 2001 the prosecutor gave a sanction for pre-trial detention without bringing charges against him. The sanction only mentions that I. was arrested for "committing a crime." Officially, I. was informed about charges against him on September 3, 2001.[21]

Often, new charges are brought against a person after the investigation is completed. And only at that moment may a person find out the real reasons for his/her arrest. This withholding of charges makes defense planning virtually impossible for the accused and his/her lawyer, and very often the actual charges eventually brought against such accused persons are more severe than they or their lawyer were previously lead to believe.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

According to the legislation, the prosecutors are entrusted with deciding upon imposing the measures of restrictions, including pre-trial detention. As stipulated by article 412 (5) of the Criminal Procedure Code, a body of inquiry and an investigator shall inform (in written form) a prosecutor about any case of arrest of a suspect in a delay of 24 hours. The prosecutor shall decide during 48 hours after he receives a notification about the arrest whether a person shall be released or placed in pre-trial detention.

So, a decision can be taken in a delay of 3 days from the moment when arrest record is executed.

Moreover, the legislation fails to provide for an arrested person to be present when a prosecutor decides upon imposing a measure of restriction.

[21] A communication related to this case was submitted to the UN Human Rights Committee in accordance with the Optional Protocol procedure

Burden of proof in cases related to detention

An investigator shall provide exhaustive reasons that the measure of restriction such as pre-trial detention needs to be be imposed. But in practice, the investigators generally just state that the arrested person is suspected of committing a grave crime, punishable with the deprivation of liberty.

Time of in detention upon the adjudication of a case

The extension of the time in detention often violates procedural norms.

The general limit for pre-trial detention is two months according to article 92 of the Criminal Procedure Code. Time in pre-trial detention can be extended up to 9 months. In regard to persons accused of grave crimes, pre-trial detention can be extended up to 15 months in total. It is prohibited to keep a person in pre-trial detention for a longer time, and a person shall be immediately released at the end of that time. The period of time when an accused and his/her lawyer familiarize themselves with the criminal case file is not counted as time in pre-trial detention.

As a general rule, time in pre-trial detention is directly dependent on the time taken in the investigation of the case. Investigators do not consider separately whether or not a person should remain in detention.

The national legislation switches the rule of the presumption of liberty before the court. According to article 92 of the Criminal Procedure Code the time in detention can be extended if "… there are no grounds to change the measure of restriction." Thus, the legislation provides not for *the existence* of the grounds for extending the detention, but for *the lack* of grounds to change it. The grounds indicated in article 412 (3) of the Criminal Procedure Code for imposing pre-trial detention, as a measure of restriction, should of apply in the same manner to extending it.

4 Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

The Criminal procedure Code of Tajikistan contains a chapter about the mechanisms of complaints against the actions of the bodies of inquiry, investigators and prosecutors. Any action of these officials can be appealed, as well as the grounds and legality of imposing a measure of restriction such as pre-trial detention.

Pre-trial detainees almost never take this legal recourse. Very few cases are known where defense lawyers appealed to courts in order to question the legality of the pre-trial detention, and it is almost impossible to win such cases. This situation is related to the fact that the law fails to make this procedure efficient.

According to the article 221 (1) of the Criminal Procedure Code, complaints related to imposing pre-trial detention as a measure of restriction or to extending it could be brought by a plaintiff, his/her lawyer or his/her legal representative directly to the court or sent to the court through the person responsible for inquiry, an investigator or a prosecutor.

The investigator, prosecutor or administration of the place of detention shall send the complaint and documents confirming the grounds for and legality of the detention. It shall be sent to court within 24 hours of the receipt of the complaint.

.

A judge shall conduct a judicial verification over the legality and adequate grounds for pre-trial detention in a place where the person is kept in custody. The arrested person can take or not take part in the judicial verification, but his/her legal representative shall be present (article 221 (2) of the Criminal Procedure Code.)

The judge starts the verification of the legality and grounds for pre-trial detention not later than 3 days after the receipt of documents confirming the legality of the detention. There are no norms in the legislation that would regulate how long such verification could last, and what the time limits are for a judge to decide about canceling, changing or keeping this measure of restriction. Thus, the process of verification could be too long. Moreover, even in cases in which the judge decides to change or cancel the measure of restriction, the investigator has the option of applying the detention again later.

In reality, judges hold only superficial, very formal examination of cases with regard to the legality and grounds of detention, and as a general rule keep in force the decision of the prosecutor about imposing the pre-trial detention. The "gravity of crime" is enough for a judge to confirm the legality of detention, regardless of lack of other grounds to keep a person in custody and numerous violations committed by policemen during the arrest.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

The Constitution of Tajikistan (article 21) establishes that "the rights of victims of offenses shall be protected by law. The state guarantees victims judicial protection and compensation for damages."

The rights of a victim of unlawful detention are regulated by article 59 (1) of the Criminal Procedure Code that reads "when a criminal case is dismissed due to the absence of a criminal act, absence of corpus delicti in an act, or to the failure of evidence of implication of a person in a crime; and also when a verdict of acquittal was pronounced by the court, a body of inquiry, investigator, prosecutor or court shall inform the concerned person about the existing procedures for restoration of his violated rights and shall adopt the measures prescribed by law in order to provide compensation for damages caused to a person by unlawful conviction, unlawfully bringing him to criminal responsibility, or unlawful application of the pre-trial detention as a measure of restriction.

The law "On applications of citizens" regulates the issue of compensation for a person if the rules established by law were violated while his/her application or complaint was considered. In case if a complaint/application was granted, the body (organization) that had made the unlawful decision, shall compensate the person for damages related to the filing and consideration of the complaint, including the amount of state dues, expenses related to the participation in the examination of the complaint as such participation was requested by a state body, and an average income lost during the related time period. The disputes related to compensation shall be solved in courts.

A person has the right to compensation for moral damages caused by unlawful actions or decisions of a state body or an official while considering his/her application/complaint. The amount of moral damages is to be determined by a court.

The issue of compensation is also regulated by the Civil Code of the Republic of Tajikistan. Particularly important is part 2 of article 1115 that prescribes that "moral damages shall be awarded independently of the guilt of the inflictor in the case if the damage was the result of unlawful conviction, unlawful bringing of a person to criminal responsibility, unlawful application of the pre-trial detention, a recognizance not to leave as a measure of restriction, or unlawful application of an administrative penalty in a form of short-term detention or of correctional labor."

The rules for establishing the amount and the procedure of compensation for damages are described in article 1116 of the Civil Code. The compensation for moral damage shall be provided in monetary form. The amount of the compensation shall be identified by a court on the basis of physical and moral sufferings inflicted on the victim and also of the guilt of inflictors (if the compensation results from the guilt of inflictors). The compensation shall be fair and reasonable. Physical and moral suffering is established by a court taking into account the circumstances of the case, when the damage was inflicted, and individual characteristics of the victim.

Article 358 of the Criminal Procedure Code also prescribes criminal responsibility for unlawful arrest and detention.

Thus, the legislation of Tajikistan prescribes the compensation for damages inflicted by unlawful detention applied as a measure of restriction, in cases where a court establishes the unlawfulness of such detention. Nevertheless, in reality the mechanism of enforcement of this right is not adequate. Cases where the court recognized the unlawfulness of the detention of a person are extremely rare. And even though a court could take such decision, it is extremely difficult to obtain the payment of compensation.

This is confirmed by interviews conducted with judges. In response to the question, "if a person has been convicted due to the judicial mistake, and then acquitted will (s)he get compensation for moral and material damages," 45% of judges gave affirmative responses, and 55% of judges negative.

A number of factors cause such a state of affaires. The population's general mistrust of law enforcement and judiciary can be named as the first factor. People do not believe that a court can help them to right a wrong and do not appeal to courts with complaints about unlawfulness of their arrest and detention. The second factor is related to the fact that law enforcement officers insist that people who have been detained sign a note upon their release that states that they have no claims. If a person refuses to write such note, his/her release is deferred under different pretexts.

Special categories

1. People with mental illness/disability.

1. A person with mental disorders/illness can be hospitalized in the following cases as prescribed by laws on psychiatric help:

- Voluntary hospitalization – with the person's consent.
- Persons recognized by court as legally incapable can be hospitalized with the agreement of their legal guardians;
- Minors can be hospitalized with agreement of their legal guardians or of the state bodies of guardianship and trusteeship;

- Persons with mental disorders who have committed a socially dangerous act stipulated by criminal legislation can be placed in a psychiatric institution by the decision of a court.

2. Establishment of legal incapability due to mental illness or retardation shall be done by a court of law following the request of the person's relatives, work collectives, state or public organizations, prosecutors, bodies of guardianship and trusteeship, psychiatric hospital, or by an initiative of a court. The list of persons/entities enabled by law to appeal to the court in order to ask for restoration of the legal capability of a person is the same. The person who has been identified by a court as legally incapable is deprived of rights to appeal to court and ask to restore his/her legal capability.

   A legally incapable person can be committed to a psychiatric hospital without his/her consent if his/her legal representative requests it. The legislation fails to provide for further judicial control over the legality and grounds for keeping such persons in psychiatric institutions. In reality, the relatives or other legal representatives get an agreement with a doctor-psychiatrist, and place legally incapable persons in the general regime departments of psychiatric institutions. There is no judicial control over the legality of the person's stay in the institution. Thus, these people can be kept in the psychiatric institution for an indefinite time period, and their release depends only on the will of their relatives and that of the administration of such institutions.

3. A minor can be placed in a psychiatric institution at the request of his/her legal representative or by the decision of a state body of guardianship and trusteeship. Such decisions can be appealed to the court. The law fails to identify the subjects who could appeal to the court against the decision of the body of guardianship and trusteeship. In reality, there is no judicial control over the legality and grounds for placing a minor in a psychiatric hospital and keeping him/her there.

4. The Law on Psychiatric Help (article 28) provides for hospitalizing a person without his/her consent or the consent of his/her legal representative by a decision of a doctor-psychiatrist. This measure can be applied to a person with expressed mental disorder that does not allow him/her to make conscious decisions who can represent a danger to him/herself or people around him/her, or to a person who does not undertake a treatment and does not use psychiatric help system, and put his/her health in danger and can inflict serious moral and material damages to the people around him/her. A commission of doctors-psychiatrists shall consider the grounds for such hospitalization within 72 hours of its being imposed. The Commission shall either confirm that the hospitalization was grounded or establish that the grounds for hospitalization were not sufficient. If the latter decision is made and the person does not express a will to stay in the hospital, s/he should be immediately discharged. In the case that the commission confirms that the hospitalization was grounded, the decision of the commission shall be forwarded to a local court within 24 hours. The court shall decide whether that person shall be kept in the hospital. Similar examinations of the person by the commission of doctors-psychiatrists shall take place monthly within six months period in order to identify whether treatment in the hospital is needed. After six months of hospitalization, the conclusion of the commission about the need to prolong treatment is forwarded to the court (the concerned person's consent is not required.) the court can make a decision on extending the stay of the person in the hospital. Then, every six months, the court can decide on the issue of the extension of the person's stay in the hospital.

   In reality this procedure is not followed as established by law. In practice, a legal representative (guardian, relatives) of a person with a mental illness requests that a doctor

hospitalizes the individual in question. The doctor gives a reference for the case, and with this reference the person can be hospitalize in a psychiatric institution (general department.) The requirements set by the law concerning a mandatory notification of a court within 72 hours about the involuntary hospitalization of the person and the 6-months judicial review period over the legality and grounds for keeping a person in the institution are not being respected in practice.

According to the opinion of judges, psychiatric institutions should take initiative in asking courts to review their cases. The courts are not entrusted to start the examination of such cases. Thus, the judicial review of the conclusion of the medical commission concerning involuntary hospitalization is upon the complete discretion of the administration of the psychiatric institutions. To the knowledge of judges, there were no such cases in Tajikistan.

5. A court can place individuals with mental disorders who committed serious socially dangerous acts punishable in accordance with the criminal legislation, in a psychiatric institution. A panel of forensic psychiatric expertise shall be held beforehand by a commission of doctors. The court shall define the regimen that the person shall be kept on based on the conclusions of the medical commission:
    - Compulsory medical supervision and psychiatric treatment (without hospitalization);
    - Compulsory treatment in a psychiatric hospital of general type;
    - Compulsory treatment in a specialized psychiatric hospital;
    - Compulsory treatment in a specialized psychiatric hospital with intensive supervision

    A medical commission shall present their decision with regard to the transfer of a person from one regimen to another one. This rule concerns people in specialized psychiatric hospitals and in specialized psychiatric hospitals with intensive supervision. As a general rule, the court shall review such cases every six months. Nevertheless, again, in reality, the examination of such cases takes place only by the initiative of the psychiatric institution and concerns exclusively the issue of change of regimen. According to judges, if a psychiatric institution does not address the court with such problems, the court itself would not initiate the examination of such a case. Thus, the requirement of the judicial control over the legality and grounds of keeping a person in a psychiatric hospital is violated in practice.

6. As usual, there is no defense lawyer present during the hearings on a case of change of regimen. The participation of a prosecutor is mandatory. According to the judges and prosecutors, there is no need to have a defense lawyer at such hearings, as they take place only in case if the issue is about changing the regimen to a less restrictive one.

7. The law provides for prosecutor's control over the psychiatric institutions. The prosecutor's office in the locality of the institution is responsible will be given the control duty. There is no specializing department to deal with such cases. There is no schedule for visits of the psychiatric hospitals by prosecutors. Such visits generally take place not more than once a month and only in cases where there are complaints received or there are newcomers in the institution.

Children[22]

1. There is no special department in the police that exclusively handle children's cases. In general,[23] law enforcement officers do not have training for work with children. There is no special room for detention of minors in the police departments. A minor can spent 2-3 days in the investigator's room.

Some cases of minors committing petty offenses are decided by the Commissions on Minor's Affairs *(Abbreviation in Russian – KDN)*[24]. The KDN are convened under the local administrations (Khukumats.)

Commission on Minors' Affaires has discretion on placement of minors in the special correctional institutions. This can be applied in cases where a minor commits socially dangerous acts, or if s/he seriously and systematically violates the rules of public behavior. In reality, children who do not attend school, who do not obey to their parents and teachers, who sell things in the markets or live in the streets are also sent to the special correctional institutions despite the fact that there is no legal ground for such penalties.

A child aged of 11-14 years old can be sent to a special correctional school, and of 14-18 years – to the Special Correction Professional Technical College. Both school and college are closed custodial institutions. Children can be kept in the special correctional school until the age of 15 and in the college until 18. The time of stay in the institution is determined by criteria of rehabilitation (whether a child is "reformatted") but shall not extended three years. In reality, children can spend up to 6 years in such institutions.

The relevant local Commissions on Minor's Affaires (from the area where an institution is located) shall consider regularly (at minimum –annually) whether the stay of a minor in a special correctional or medical correctional institution is still needed. This issue can be examined following the request of the administration of said institutions of parents (or the guardians) or by the initiative of the Commission. The child or his/her parents shall take part in the hearings. Nevertheless, according to children in the institutions, many of them were not present at the hearings of the commission when they were placed in the correctional institution. They also did not have a lawyer who could defend their rights and interests.

2. The chairperson of the Commission or his/her deputy can order (in written form) the placement of a child of 11 to 14 years old to the "reception center for minors" *(special place of detention called in Russian as "priemnik-raspredelitel')* for not more than 15 days. This measure can be applied if a child committed a grave, socially dangerous act and there is an immediate need to isolate him/her.

If there are serious grounds indicating that a minor that the Commission decided to place in a special correction institution will conduct criminal or other anti-social activity, the Commission has discretion to order detention of a minor for 30 days in the Reception Center for Minors. The center shall finalize the case-file of a child and transfer the child to the special correctional institution.

[22] Information of the present chapter is based on the report of the Expert Group on Juvenile Justice created in 2001 by the National Commission on the Rights of the Child.
[23] NGO and international organizations together with the Ministry of Interior conduct training for policemen on the issues of the rights if the child, but such activities are quite limited and cannot involve all the policemen.
[24] Activities of the Commissions on Minors' Affairs are regulated by a Regulation on the Commissions on Minors' Affaires of February 23, 1995

In exceptional cases, the Commission on Minors' Affaires has the right to extend the detention of a child in the reception center for up to 15 days.

Children aged 3-18 years can be placed in the reception centers. These institutions are closed; they have guards in uniform. As a general rule, children younger than 14 years are placed in the reception centers. The main reason for placement is the failure of the police to identify the place of residence of a child. Children spent about 2 months in such centers, some of them even longer.

3. The Regulation on the Commissions on Minors' Affaires does not provide for judicial control over the legality and grounds of the deprivation of liberty of a child. The decision of the Commission about placement of child in a reception center (up to 45 days) can be appealed only to the bodies of the executive. The decision of the Commission can be appealed by a person whom it concerns or by a victim within 9 days. The appeal shall be sent to the Khukumat – local administration. The decision on the complaint shall be made within 15 days and is final.

Thus,

- The decision about depriving a minor of his/her liberty (detention, placement in closed correctional institutions) is made on a basis of the Regulation on the Commissions on Minors' Affaires. This regulation is not a law. This situation violates paragraph 1 of article 9 of the ICCPR; "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."
- The Commissions on Minors Affaires are part of the executive power and not judiciary. They do not meet the criteria of a competent body executing judicial power.
- The time limits of 30 (and up to 45 in "exceptional cases") days in detention does not adhere to the requirements of paragraph 1 and 3 of the article 9
- The legislation fails to establish the mechanisms of appeal to the court against the decision of de-facto deprivation of liberty of children. This violates paragraph 4 of article 9 of the ICCPR.

ARTICLE 14

1. ***All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.***

Access to justice

Constitution of the Republic of Tajikistan (Article 19) guarantees to everyone judicial protection. Everyone has a right to require his case to be considerate by a competent, independent and impartial court established by law.

Some groups of people are deprived of the right to apply to the court.

1. A person can be recognized by a court as legally incompetent due to the mental illness or retardation. A request for such a court hearing can be made by the relatives of the concerned person, the work collectives, state and public organizations, a prosecutor, bodies of guardianship and trusteeship, psychiatric medical institution, and also by the initiative of the court. The same persons and entities have the right to apply to the court in order to restore the legal competence of a person. The concerned person who has been recognized as legally incompetent does not have the right to apply to the court with a request to restore his/her legal competence.
2. Minors are also deprived of the right to apply to the court. Their legal guardians and a prosecutor are entrusted to apply to the court on their behalf. All human beings under the age of 18 are minors according to the national legislation. These persons are not fully legally capable. The legislation provides for some exceptions under which a person below the age of 18 may be full legally competent. The legislation regulating family related issues provides for the right to marry starting at 17 years old (at 16 years by court exception.) In case of marriage, a married person below the age of 18 gets full legal capability. A minor of 16 years of age working on the basis of work contract, or conducting entrepreneurship activities with the consent of his/her parents, adoptive parents or legal guardians may also be treated as fully competent by the courts (Articles 22 and 28 of the Civil Code of the Republic of Tajikistan.)
3. The Criminal Procedure Code (Chapter 20) provides for the possibility of appeal on actions of bodies of inquiry, investigators and courts. The same is true for the Civil Procedure Code – from the letter of the law it gives the greatest opportunity to appeal to the courts with any complaint on any action, lack of action of any state bodies or officials that violate the constitutional rights of people. But the reality is different. Both practicing lawyers and simple people who came into contact with justice system note that there is no real access to justice in the Republic of Tajikistan. In civil cases, the biggest problem is that it is almost impossible to be received by a judge (as provided for by the legislation.) And if documents are sent to court by mail, they often get lost and further prolong legal proceedings.

Most of complaints of the population are related to the performance of the secretariats of the courts on civil cases. Bad management and the work style of the secretariats impede the realization of access to justice. An interested person can get access to the case file of his civil case only once or twice a week during strictly defined hours. As the work log is very big, there are long lines of people trying to get access to their documents. For weeks and sometimes even months, people cannot get copies of the court decisions on their case. For example, in the court of the Sino district of Dushanbe city there is a notice "The issue of copies of court decisions is conducted on Fridays from 8 am to 12 pm"

Right to a public hearing[25]

- There are instances in which the hearing of criminal cases takes place on the territory of penitentiary institutions. In such case, the hearing is de-jure public, but de-facto the relatives, media and general public have no access to the courtroom based on the fact that the "penitentiary institution is a closed institution with limited access to it." Thus, independent observers and media were refused access to the hearing on the case of Mr. K., the former mayor of the Leninabad (now Sogd) region, as the hearing took place on the territory of the penitentiary institution # 7 of Dushanbe city. As a general rule, hearings on cases where a group of people (more than 10) are accused take place in the penitentiary institutions under the pretense of "reasons of security" and "for political reasons."

- Most of the court hearings take place in the judge's chambers. Thus, the public is prevented from attending the hearing for the reason that there is no space available. One of the reasons for holding the hearings in the judge's chambers is the lack of courtrooms in different court buildings. For instance, in the High Economic Court there are no courtrooms for hearings at all. In some other courts their number is insufficient. For example, in the district courts of the city of Dushanbe, there are up to 2 courtrooms, and about 25-40 hearings take place in these courts a week. Another reason for holding hearings in the judge's chambers is that the conditions in the courtrooms are unsuitable – no heating in winter, lack of light, no renovations made for many years.

- Although the legislation provides for the possibility to record/transcribe what happens at the hearing using pen or register with audiotape without getting permission of the judge, in practice judges often do not let journalists or observers to register with audiotape or make written notes. If the notes are still made, the judge requires seeing them.

General requirements of the fair trial.

Admissibility of evidences.

The Criminal Procedure Code in place fails to provide for the possibility to have real adversarial character of process based on the equality of arms.

The problem if inequality of arms is especially acute in the criminal process. The law provides the defense with the possibility to request some investigative actions, but the investigation bodies have the authority to satisfy or deny the request.

[25] Based on the results of the Monitoring on the Right to Public Hearing conducted by the Bureau on Human Rights and Rule of Law (2004 г)

By the letter of law, the defense can present its evidences. A defense lawyer has the right to apply to experts to get their conclusions on some matter and also to require the individuals and legal entities to present the documents needed for the case. Nevertheless, the official organizations and non-governmental structures do not recognize these rights of defense lawyers. At the same time, the collection of evidence requires serious expense that most suspects and accused people cannot afford. A defense lawyer also has the right to interrogate witnesses. The defense cannot require conducting an expert examination; this is an exceptional competence of the bodies of investigation. At the same time, expertise is under monopoly of the state; no independent expert examination institutions exist in Tajikistan.

In such situations the general approach of the judges in studying and evaluating evidence makes the position of the defense even more vulnerable. The judicial practice does no longer follows the rule of direct study of evidence by the court. Judges base their decision on confessions obtained during the pre-trial investigation and the materials of investigation disclosed in the court (minutes, witness testimonies.) Basically, the courts often just confirm the position taken by the investigation.

National legislation does not provide for "inadmissibility of evidence" and does not describe the rules for recognizing evidence as inadmissible.

Thus, in many cases the defense asks to recognize the evidences obtained with violations of the law as inadmissible. It applies for exemption of the expert examinations that were ordered and carried out with violations of law. The courts do not pay attention to such requests and do not exclude such evidence from the process. In numerous cases, the judges used as evidences the testimonies of the accused that, according to the accused, were obtained under psychological and physical pressure. So, often the conviction of a person is based on compulsory self-incrimination.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Public statements by media and high level officials claiming a person guilty

The UN Human Rights Committee in its Views on the case "Saidov against Tajikistan" (2004) established that, "the extensive and adverse pre-trial coverage by state–directed media which designated the author and his co-charged as criminals, thereby negatively influencing the subsequent court proceedings; and Article 14, paragraph 2, have been violated."

It is a usual practice of Tajik officials to make public statements regarding the guilt of accused persons while the investigation is still on going. The Prosecutor General in his speech on National Television labeled the former mayor of Leninabad (now Sogd) and his co-defendants as "criminals" right after the investigation was completed.

Presumption of innocence and long terms of pre-trial and during the trial detention

Numerous cases of long and extra long detention of the accused before adjudication (the present report contains some examples of such practices) are incompatible with a principle of the presumption of innocence.

Taking into account the conditions in detention[26], in pre-trial detention in particular, it is hard to imagine that the authorities believe in the innocence of these persons.

[26] see the chapter on Article 10 of the ICCPR

Place of a defendant during the court hearing

It should be noted that almost all courtrooms where the hearings on criminal cases take place have a special place for the defendant. These places are separated from the rest of the room by metal bars; their area is about three-square meters. They are often called "cages". Often, judges insist that even the defendants who were not in pre-trial detention be put in such a "cage" during the hearings. The fact that a defendant is in a "cage" during the court hearing creates the impression that he/she is guilty even before the court adjudicates the case, as he/she is already "behind the bars." Thus, the use of "cages" in the courtrooms is in serious contradiction with the principle of the presumption of innocence.

Presumption of innocence and burden of proof: Interpretation of doubts in favor of a defendant.

The principle of the presumption of innocence as a rule is not respected in Tajikistan. In reality, an accused has to prove his/her innocence. Moreover, even in cases where a defendant and his/her defense lawyer can provide the court with serious evidences of his/her innocence, often the judges do not take such evidence into account. The principle of the presumption of innocence also includes the obligation of the judge to interpret in favor of the defendant all the doubts that cannot be resolved. In our opinion, the procedure when the court sends the case for "additional investigation" by itself violates the principle of the presumption of innocence. The role of a court is to establish truth based on the evidences presented by parties. Providing the court with the right to send a case to additional investigation in a certain way "transforms" the court into an investigative body that it should not be. If the prosecution cannot prove the guilt of a defendant he/she should be acquitted.

4. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

As it is described in the chapter on the present report dealing with Article 9 (point 2), often an accused find out what the charges are against him only at the end of pre-trial investigation.

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

This right is often violated for the following reasons:

- The investigation bodies limit the access of an accused to the evidence during the whole period of investigation. This results in the lack of any possibility of defense of an accused and his/her lawyer, as only the prosecuting party has access to all information. Such inequality between the rights of defense and prosecution is provided for by the law. The only moment when an accused and his/her lawyer have access to all the evidence is after pre-trial investigation has been completed. An investigation can last for six, twelve and sometimes fifteen months, and during all this time an accused and his/her lawyers have no information.
- Access of a legal counsel to his/her client (that is extremely important especially at the beginning of an investigation) is limited by the requirement to have permission from an investigator and/or a court. In order to see his/her client, the defense lawyer has to present a special permission given by an investigator. An investigator can issue such permission for the whole time of investigation but also has discretion to issue such permission for one meeting only.

- As it derives from the Criminal Procedure Code, there is no obligation to ensure that a suspect has a lawyer during the actions of inquiry.
- There are numerous cases where defense lawyers are refused the access to their clients without any explanation. Such was the case of the criminal proceedings initiated against a judge of the Khugzhant City Court for rendering a knowingly illegal sentence. He was detained, and for a long time his defense lawyer was not allowed to see him.

c) To be tried without undue delay;

This right, together with the right stipulated by paragraph 3 of article 9 of the ICCPR, guarantees the right to trial without undue delay for everybody and not only for people kept in pre-trial detention. This right concern the whole duration of the case, including the pre-trial period, the examination of a case by the courts of first and cassation instances, and all the types of "additional investigations," reviews of the case until the final verdict is given and is executed. Numerous cases of violation of this right exist in Tajikistan; trials take too long due to the work log of the courts and numerous additional investigations in different cases. More comments on this right can be found in the Chapter of this report dealing with paragraph 3 of Article 9 of the ICCPR.

d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

1. Defendant is one of the main participants in the court hearings, and his/her presence is mandatory according to the paragraph 1 of Article 246 of the Criminal Procedure Code of the Republic of Tajikistan. The possibilities for trials *in absentia* shall be strictly limited. Paragraph 2 of Article 246 states that "Trials *in absentia* can de admitted only in exceptional cases and if it does not impede the establishment of the truth in a case; and also when a defendant is out of the territory of Tajikistan and he/she defaults"

Trials in absentia may result in superficial and incomplete study of the evidence and in many cases cause severe violations of defendants' rights and lead to unlawful and ungrounded sentences. The wording of Article 246 (2) is too general. It fails to concretely identify the types of cases in which the trials *in absentia* are allowed. It fails to identify what might be "an exception case." Would sickness of a defendant be "an exceptional case?" The current wording of this article leaves open possibilities for judicial abuses and violation of human rights. It shall also be noted that the possibility of trials *in absentia* in cases where a person is outside of the Republic of Tajikistan violates Article 20 of the Constitution of the Republic of Tajikistan and its international treaties. A trial shall start only when the defendant is present. If a defendant while being outside of the territory of Tajikistan defaults, there are legal procedures that can be used in order to bring him/her back to Tajikistan. One of such procedure is a request for extradition that can be sent to a State where the defendant permanently or temporarily resides.

2. As already described in the Chapter of this report dealing with Article 9, the right to legal assistance is one of rights that is very often violated during detention. Often arrested people are not informed that they have a right to legal assistance, or they are forced to refuse such assistance.

The disproportion between the number of cases received by the courts and the number of lawyers who have the right to represent the parties during the process, and the opportunity of the lawyers to participate "by appointment" (paid by state) in cases is directly related to the limited access to the legal profession. As a general rule legal assistance is provided by advocates (attorneys at law.) In Tajikistan there are two institutes of advocates; collegiums of advocates (the Bar) and private attorneys at law.

Collegiums of advocates are independent associations of professional lawyers united with the aim to provide qualified legal assistance to individuals and legal entities. There are two Collegiums functioning in Tajikistan – Republican (national) Collegium of Advocates and Collegium of Advocates of Sogd region. Qualification commissions of both Collegiums adopt decisions on accepting new members. The procedure for joining the Collegium includes qualification examinations for the people who have a university degree in law and minimum two years of work experience in the legal profession. The collegiums adopt the rules of professional ethics, consider the complaints presented on the actions of lawyers (members of the Collegiums) and conduct disciplinary procedures.

Private attorneys at law are the entrepreneurs who provide legal assistance. They should have a license for such type of activity. The Ministry of Justice issues licenses for one, three or five year terms after a lawyer has passed a qualification examination. The requirements for applicants are the following: university degree in law, minimum two years of work experience in legal profession, citizenship of the Republic of Tajikistan, payment of the fee for the license.

Today in Tajikistan there are about 456 advocates (346 members of the Collegiums of Advocates and 110 private attorneys at law.)

Both advocates and jurist-consults can provide free legal assistance in cases "by appointment." In practice, the advocates – members of the Collegiums of advocates - mostly render such assistance. Private attorneys at law are not solicited to provide free legal assistance on a "by appointment" basis.

The population of the Republic of Tajikistan is about 6,640.0 millions.

Number of advocates and interns in relation to the population figures of certain regions of Tajikistan.

№	Region	Population (thousands)	Practicing advocates	Interns
1.	Dushanbe city	619.4	135	12
2	Main Regions (9 regions)	1,467.6	29	1
3	Gorno-Bakhshan Autonomous Region	215,8	1	-
4	Sogd region	1,992,6	139	18
5	Khatlon region	2,344,6	42	-
	Total	6,640.0	346	31

Thus, there is acute shortage of advocates in the country. This lead to numerous problems, among others:

- The fact itself that there are not enough advocates limits the access of people to professional legal assistance;
- The possibility to choose a lawyer is extremely limited. In some regions there are only one or two advocates for the whole region. This situation also results in delays in considering cases by courts, especially of the criminal cases where the participation of a

lawyer is mandatory. Sometimes, due to the lack of lawyer the courts do not schedule the hearings on a case for several months.

- Legal services often are extremely expensive. The fact that there are not a lot of advocates allows them large choice in selecting their clients.
- The procedure of joining the legal profession is not objective;
- There are no unified criteria. The qualification examinations are organized by the Collegiums that at the same time have the right to decide how many people shall be employed and define the condition for their employment.
- There is a lack of transparency of procedures and of public control over the rules for acceptance of lawyers to the Collegiums, etc.

The legislation provides for assignment of a lawyer "by appointment" in cases where a person cannot pay for legal assistance. *De-jure* anyone can get fee legal assistance. Low-income defendants can get legal assistance in criminal cases if their cases belong to the categories where the participation of a lawyer is mandatory. If legal assistance is not mandatory, the defendants can still get it if they submit a request for assistance based on the fact that they have low income. Although legal assistance is mandatory for many offences, it is not provided for the offences where a minimal sentence is less than three years of imprisonment. Thus, defendants who are accused in committing a crime punishable by less than three years up to ten and sometimes twelve years of imprisonment are deprived of guarantees for free legal assistance. As a result many of those sentenced to long terms of imprisonment did not have a lawyer.

The quality of legal representation and assistance is often unsatisfactory. The legal consultations of Human Rights organizations often get complaints on the actions of lawyers - mostly those acting by "appointment." There are no standards of professional conduct related to cases "by appointment". Nor is there a system of control for quality of assistance. All the responsibly is on the professional Collegiums that are largely criticized for unsatisfactory performance.

Not The Ministry of Justice, nor the courts or legal corporations **have statistical data related to legal assistance**. It is not known whether the number of cases where legal assistance was provided increased during the last years. State institutions do not collect data on the number of cases where the legal assistance was provided, and the data of Collegiums is not reliable.

Advocates provide free legal assistance in accordance with the Instruction on Providing Legal Assistance to Individuals and Legal Entities. This Instruction was adopted by the Collegiums of Advocates of the Republic of Tajikistan and approved by the Ministry of Finance of the Republic of Tajikistan. The Instruction determines the amounts of minimal fees for certain types of legal services. The payment for the cases "by appointment" is 50-70% less than for cases by contract. Thus, advocates are not interested in taking such cases. Mostly lawyers with little experience are assigned to the "by appointment" cases and their advocacy is often of low quality and has little effect.

The procedure of assignment of "by appointment" cases to lawyers is problematic as well. The managers of the advocates' offices ("consultations") decide upon the distribution of such cases. In reality such cases are distributed among young and/or less experienced advocates, those who have fewer contract cases. Such distribution takes its roots in the monthly financial plan – amount of money that a lawyer, member of the Collegiums, shall pay every month to the budget of the Collegiums. Monthly plan is about 100 somoni (30-35 US dollars.) Thus, the advocates who have a certain clientele for contract cases are automatically freed from taking "by appointment" cases.

There is no **separate budget for legal assistance** in Tajikistan. The payment for assistance "by appointment" is made from the budgets of local Khukumats (administrations.) Khukumats do not have a separate budget line for legal assistance. In reality, the payment is done from the reserved funds of Khukumats that often lack money. Local administrations regularly accrue large debts to "assignment" attorneys for lack of money to pay them on time.

e) ***To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;***

Human Rights organizations get great numbers of complaints on violations of this right. According to the Criminal Procedure Code, the prosecution party at the end of accusation act names "the list of individuals to summon to the court hearing," and courts never challenge this list of witnesses. The requests from the party of defense to summon other witnesses are often rejected even though the interrogation of the latter might be important for the case.

Another problem is related to violations of equality of arms for interrogation of witnesses. Often, the prosecution interrogates the accused during pre-trial investigation, and so they have the opportunity to ask any questions that could raise doubts or confirm the testimonies. The defense is deprived of this right in every case where the court denies the requests of the defense to call witnesses to the courtroom and deprives the defense of the opportunity to interrogate them. The protests of the defense party are not taken into account.

f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

This right shall be effective and shall be ensured not only by the presence of a professional interpreter but also by exact, adequate translation of the whole court proceedings. In reality often only the questions to an accused and his/her testimonies are translated. Often the judges themselves perform the role of interpreters.

g) Not to be compelled to testify against himself or to confess guilt.

See the Chapter of the present report dealing with Article 7 of the ICCPR

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

A specialized system of juvenile justice does not exist in Tajikistan, although the legislation provides for some additional guarantees for minors such as mandatory presence of a defense lawyer and a pedagogue during any investigative action. Nevertheless, the general punitive approach of the criminal justice system is the same for minors as for adults.

Often, minors get punishment in the form of factual deprivation of liberty, and serve sentences in penitentiary institutions although it is evident that their rehabilitation would be much more effective if they were to stay with their families. Isolation from society is largely used when it is not necessary.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

The legislation establishes guarantees for compensation in cases of unlawful bringing of a person to criminal responsibility when a court proves the fact that it was unlawful. These guarantees are extremely rarely used, as the number of acquittals is extremely low. Moreover, there is a procedure of suspending a criminal case for "non-rehabilitating reasons." This procedure is generally used in cases where the accusation party knows that a person has a chance of being acquitted.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

The existing possibility to reverse in a review procedure (initiated by officials) previous judgments, including acquittals, leads to the violation of a right to a fair trial. As the stability of the court decisions is one of the components of this right. In today's reality the parties to a case are de-facto permanently under the risk that the court decision will be reversed.

A "fair trial" requires that a concerned person has the right to hear, at a certain point, the final decision of the court (in civil or criminal cases) that would not be changed under any circumstances. Such an approach would guarantee legal stability. Unfortunately, Tajikistan fails to adhere to such an approach and the concept of finality of judicial decisions is often undercut.

Independence of courts and judges.

The judiciary in Tajikistan is in quite poor condition and remains under the firm control of the executive. Independence of courts and judges raises numerous concerns. The main concerns are related to the procedure of appointment and removal from the office, rotations, qualification examinations, salaries, financial dependence, and the role of prosecutors and the Council of Justice.

The President has the unabridged power to determine the number of judges in the country, the location of their posting, and their salary level. He may also remove them from office largely at will (a power that he has not very often exercised, but that has a chilling effect on the independence of judges). The Constitution and the law do provide for judicial immunity, but the pressure is applied by use of forced resignations and the transfer of judges to less desirable districts.

1. The far-reaching power of the Council of Justice impedes the real independence of judges and courts in Tajikistan. The Council of Justice is a body of the executive. It has seven members. One of the members is a representative of the Supreme Court, one is a representative of the Parliament, and the other members are appointed by the President. The Council of Justice has full control over the activity of judges. For example, in order to invite a judge to training or a conference, he/she must get permission in the Council of Justice. While the Bureau on Human Rights was conducting its Monitoring, the judges asked to obtain a permission of the Council of Justice in order to reply to the questionnaire.

2. The president can remove a judge from the office before the end of his/her term by the request on the Council of Justice. Only judges of the Constitutional Court, the Supreme Court and the High Economic Court have at least some formal additional guarantees, and the Parliament decides on the issues of their appointment/removal from the office. All other judges are highly dependent on the President.

3. In cases where a judge has several sentences that were reversed by higher level courts, that judge may penalized – he/she may not be appointed for the next term, or even removed from the office. Thus, the judges try to give maximum sentences in order to avoid such pressure. That means that judges can be and are de-facto punished for their actions taken in their official capacity. Statistics (conviction rate) indicate that the courts generally follow the lead of prosecutors. Moreover, the prosecutors influence courts in several ways, such as a letter of concern (chastnoe predstavlenie) placed in the judge's file stating that the judge misjudged a case and/or special appeals (supervisions). No meaningful process exists under which other judges, lawyers, and the public may register complaints regarding judicial conduct.

4. In recent years, the pressure on judges has been rising; there are more proceedings against judges accused of taking bribes or issuing a knowingly unlawful sentence. For example, currently there is a proceeding on Mr. A., a judge of Khudzhant City Court. He is accused of misjudging cases – adopting knowingly unlawful sentences. Nevertheless, on the opinion of his lawyer the real reasons for the prosecution of this judge is the fact that he acquitted Mr. S. (citizen of Uzbekistan) and Mr. F. Z.

5. The judiciary has very little opportunity to influence the amount of money allocated to it. The Government of Tajikistan makes decisions about the amount of funds to be allocated to the Supreme Court and High Economic Court by the request of the Chairpersons of these courts and for all other courts, by the request of the Council of Justice. The Council of Justice administrates the budget. Although the budget for courts shall be a specific line in the State budget, in the Law on State Budget of 2004 there was no line for the expenses of each court. The Ministry of Justice explained that the Law of State Budget has "not for dissemination" where the amount of funds allocated for courts and other law-enforcement bodies is stipulated.

6. Salaries of judges are insufficient to support families. A judge receives about 20-30 US dollars a month, amount absolutely insufficient for living. The financial insecurity contributes to the corruption and to the lack of independence and impartiality of a judge.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Different legislative acts of the Republic of Tajikistan contain the guarantees of the rights stipulated in the Article 17 of the ICCPR.

Article 22 of the Constitution of the Republic of Tajikistan guarantees the integrity of one's home and allows the interference with and depriving the person of his/her home only when provided for by the law. At the same time, Article 22 fails to provide the list of grounds that could justify the interference with one's home and leaves this issue up to the legislature.

Article 23 also stipulates that the secrecy of correspondence and communications can be restricted only when the law so provides. It also prohibits collecting, keeping and disseminating the data of personal life of a person without his/her consent.

The Criminal Code provides for criminal responsibility for libel, unlawful collecting of information on one's private life, violation of secrecy of correspondence and communications, violation of integrity of one's home, for disclosing the secrecy of adoption. Although aimed at protecting one's private life, some of these restrictions are excessive (especially it concerns libel and secrecy of adoption.)

The Civil Code of the Republic of Tajikistan provides for possibility to submit a lawsuit for compensation in case of violation of rights related to the privacy. Article 1096 also provides for responsibility of bodies of inquiry, investigation, prosecution or courts if their actions caused damages to a person and provides for compensation for such damages.

In 2004, considerable amendments have been made to the Law "On Police" (adopted in 1992) *(police is called "Milicia" in Tajikistan)*. A positive amendment is that "protection of life and health, right and freedoms of a person and a citizen from unlawful actions" was added to the main directions of police activities.

If the 1992 version of the Law contained prohibition to the police to disclose the information on private life, honour and dignity that was obtained during the professional actions; the version of 2004 prohibits to the police to "collect, keep, use and disseminate the information about the private life of a person without his/her consent if it is not provided for by the present Law and other Law of the Republic of Tajikistan."

The new version also includes some measures of the responsibilities of police officers in case of violation of rights and interests of citizens – the police shall adopt the measures to restitute the violated rights, present official public excuses if required so by a concerned citizen. Material damages shall be compensated in accordance with the civil legislation.

At the same time, the Law on Police contains numerous issues of concern; it gives very large competences to the police officers including the right to enter at any time to any dwelling and "examine" it. The police also have the right to receive necessary information from any organization or private person. The police also have the right while conducting the operative investigative actions to use the data obtained through technical means.

The political situation, high level of criminality in the country that is highly influenced by inter-Tajik conflict that ended with Peace Agreement only in 1997, for sure provides the grounds for necessity of protection of public security and of rights and freedoms of persons. Nevertheless, such large and often uncontrolled competences of the police constitute an interference with the rights under Article 17 and create large possibilities for abuse.

The law requires the sanction of a prosecutor or a judge in order to conduct the operative investigative actions with intrusion to a dwelling or with a need to restrict one's secrecy of correspondence and communication. The police are given the right in exceptional cases threatening the public security and for prevention of crimes to enter any home. All the cases of intrusion to a home against the will of its' inhabitants shall be reported to a prosecutor within 24 hours. The same rule applies to use of technical means for controlling one's correspondence or communications.

In reality, the violations related to the interference of law-enforcement bodies with one's private and family life are not appealed and are not even registered. As a general rule, it is extremely hard to a person to prove that such interference was ungrounded. This situation is caused first of all by large opportunities for arbitrariness created by the law, but also by the lack of knowledge of general population of legal norms and mechanisms. Law enforcement officers do not inform people about their rights, and often people have no access at all to the information of this kind. Moreover, even if the complaint is submitted, accepted and recognized as grounded, the law enforcement bodies fail to undertake adequate reaction to such violations. According to the interviews with the law-enforcement officers, generally if any sanction is applied that would be a transfer of such officer to a lower position or firing him/her. Almost no criminal cases or lawsuit take place.

There are cases of unlawful interference of the state officials responsible for the personnel with the private life of state employees. There is a case of an employee of Executive Apparatus of the President who was forced to resign due to the accusations in polygamy. Commission of Law Department of the Executive Apparatus of the President investigated the case; numerous issues related to a private life of the concerned official were discussed. Although the Commission decided that it was no ground to remove him from his position, he resigned, as the pressure was too high. His case was never submitted to a court.

According to different polls, there are numerous cases of direct and indirect interference with private and family life of people from the state organs. Due to the corruption in the State Registries *(in Russian ZAGS – Departments of the registration of acts of civil status)* under the local Khukumats (administrations) in different regions of the country numerous violations take place. The examples include asking for amounts exceeding official taxes in order to accept the application for marriage registration, or taking excessive time for the registration of marriages and divorces. If any sanction applied, it is only the dismissal of the Registry officer from his/her position.

Cases of interference with the private and family life by the officers responsible for guardianship of children are known. Some of them are related to serious crimes. An example – a case of sale of a newborn baby by an employee of an orphanage is now under investigation in Shohmansur department, Dushanbe city.

Cases of unlawful interference with the private life of the candidates happened during the parliamentary electoral campaign of 2005. The personal data was used as blackmail in order to force them to remove their candidacy. Thus, in order to make pressure on a candidate from

Islamic Renaissance Party from Pyandzhki district, his relationships with his wife were publicized.

The law enforcement bodies do not have special standards and methods of investigation of crimes related to the interference with one's private life. Such crimes are generally classified as "hooliganism".

Competent specialists in medicine recognize that in Tajikistan, the country with the tradition of large families, there is a problem of interference of parents and relatives with the other's private life, especially with regard to family planning. In Dushanbe, the cases of selective abortions take place under the pressure of relatives despite the fact that the Law "On reproductive health and reproductive rights" (Article 20) prohibits selective abortions. The Law provides for freedom of choice and one's own control on his/her reproductive rights. But the State fails to enforce such legislation; there is a lack of awareness raising, crisis centers, efficient complaint and mediation procedures that a concerned person could apply to. There is a lack of information on these problems.

In the post-conflict period, there is a tendency for decrease of marriageable age. The Family Code provides for marriageable age starting from 17 years old with possibility to decrease to 16 years old in exceptional cases. Forced marriages constitute a widespread problem. The criminal proceedings are initiated only in cases where minor girls are forced to marry before the marriageable age (Article 168 of the Criminal Code). During the years 1999-2004, there were 53 criminal cases on this article, and 39 of them ended with a court sentence.

There are numerous violations related to the interference with the private life of people, in particular, of ethnic Tajiks, who take the decision to adopt another religion, not Islam. The information on these violations is provided in the Chapter dealing with Article 18.

Although the cases of unlawful interference of the law enforcement officers with one's home are numerous, according to the statistics for last 5 years only 37 criminal cases were initiated on the Article 147 (violation of integrity of one's home). In 2005 there were 8 initiated cases. All of these cases are also related to committing another serious crime. There were no criminal cases initiated under other articles such as unlawful collecting information on one's private life or forcing a woman to abortion despite the fact that these problems are widespread.

There are cases of unlawful interference with one's home of the officers of military departments *(comissariats)*. All the time before the years 2004, such cases were a usual practice. Military officers were entering and searching homes at any time, in particular, at nighttime looking for young men of call-out age. The officers often did not have call-up orders and were taking anyone who met the criteria. These actions were not allowed by the Law, but were largely used. During the years 2004-2005, the call-up system started to work better. If there is a need military officers visit homes together with police officers and only after the call-up order was given to a person and he fails to follow it. Nevertheless, certain cases of unlawful interference still take place.

The confidentiality of correspondence is not respected in the closed institutions. In the penitentiary institutions it is limited by the law. In the psychiatric hospitals it is not ensured

Another problem of interference with private and family life is related to forced evictions and resettlement. On March 13, 2003, the chairman of Varzob region (close to Dushanbe) took the decision to resettle 31 families from Puguz and Begar villages of Varzob-Kal'a chamoat to another place. The decision of resettlement of the families was taken due to the state needs to enlarge the road Dushanbe-Khudzhand, and was based on the Record of the Meeting of

Government of the Republic of Tajikistan of February 2, 2003. Numerous unlawful interferences with people's private and family life were registered in this case.

According to Article 64 of the Housing Code of the Republic of Tajikistan "demolition of a dwelling due to the State or public need for free the land, can take place only after the evicted persons are provided with an equal dwelling. In the case described above, the inhabitants were informed about the resettlement on April 18, 2003. On April 24, 2003 their houses were destroyed by using special machines; and they were not provided with new houses. They were informed that they will be resettled to the village Changalak, but the houses for them were not yet ready. People were forced to live in temporary placements they could find for a year. Some stayed at the relatives' houses, some - in the local sanatorium, in a mosque. The only compensation they received was an amount of 1,500 somoni (500 US dollars), and the local officials took 500 somoni from this amount for "construction materials for new houses." The cases of violations while distributing even this small amount of compensation were registered. In cases where some families lived in different houses but on one plot of land, only one of the families was given compensation.

The norms of Article 36 of the Housing Code that provides for the 12 square meters per person in a dwelling were violated. The dwelling shall also comply with the standards and technical requirements. The houses of the settlers do not correspond nor to the size of the houses they had before neither to the norms of housing legislation, and have no conveniencies. Thus, the I., a big family of 11 people (in fact – 4 families of different generations), received one small two-rooms house of 40 square meters. In the Begar village where they lived before, they had their own two-store house. While resettled, they were promised two houses. The chair of the household got a disability after all the sufferings. He and his wife have to live in a corridor, and the conditions of their life in the wintertime are extremely hard.

The houses of settlers break down, all of them are already in emergency condition, as they were built in an inappropriate place, on yielding ground. They also break down due to the wind from power line that is close. The Khukumat (local administration) did not allow any technical commission to examine the place of residence of settlers; there was no certification for their houses. The settlers have no documents for their houses and have no residence registration. This leads to violation of their rights related to social protections, as they cannot receive any social allowances without residence registration. The houses are situated on top of a mountain. The local administration promised to organize public transport that would connect the settlers' village with the main road, but still did not fulfill its promise. The life of the settlers is extremely hard, as they have no shops, there is no food brought to the village, no first-aid post. The electricity and water are supplied only for some hours and sometimes not everyday. The land plots are very small. The basis of life, of work of settlers is broke down, and they have no means for living.

ARTICLE 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Freedom of thought, conscience and religion is guaranteed in the national legislation of the Republic of Tajikistan. Article 8 of the Constitution establishes one of the main principles of the development of public life: "In Tajikistan, the public life is developed on the basis of political and ideological pluralism. No ideology, including religious ones, can be established as the state ideology. The religious organizations are separate from the State and cannot interfere with the State affairs. Creation and activity of public association advocating for racial, national and religious hatred or calling for the violent overthrow of the constitutional order and to the creation of armed groups are prohibited." Article 26 also guarantees the freedom of belief, stating that "Every person shall have the right to define by himself his attitude towards the religion, adopt and manifest any religion individually or in community with others, or do not adopt any religion, the right to participate in the religious cults, rituals, practices."

The Law "On Religion and Religious Organizations" (from 1994) also guarantees freedom of religion and belief, and freedom to manifest one's religion or belief. The grounds for restrictions of these freedoms are similar to those stipulated by Article 18 of the ICCPR. Article 4 of the Law provides for the principle of the equal rights of citizens independently of their attitude towards religion. Article 5 establishes that Tajikistan is a secular state; and all the religions are equal before the law.

Amendments made to the Law in 1997 were related to the control functions executed by the State in relation to religious organizations. Article 5 was amended and the words "state does not interfere with the activity of religious organizations, if such activity does not violate the law" were excluded from the text.

The other amendments to the Law included the requirement that the curricula of religious institutions of secondary and high education shall correspond to the required level of education and shall not contradict the Law on General Education. Another amendment relates to the religious literature, and now it is required that the literature shall be published by the state printing houses following the proposal of religious organizations and shall be disseminated in "special places". The State organ on religious affairs, following the request and requirements of religious organizations, has discretion to identify the printing house and the places for dissemination of religious literature. Thus, these many new requirements put excessive burden on religious organizations.

The political situation in Tajikistan related to the inter-Tajik conflict of years 1992 and 1993 (ended only in 1997) caused the need for special decisions. For example, there is a party based on religious mandate – the Party of Islamic Renaissance of Tajikistan. Article 28 of the Constitution provide for the right of citizens to create political parties, including ones of religious character. At the same time, Article 5 stipulates that the religious organization do not participate in the activity of political parties". Some decisions related to the religion and political activity are based more on political than legal grounds.

The Article 7 of the Law establishes that the religious organizations function according to their own structure, they elect, appoint or change the personnel in accordance with their Statutes. At the same time, the Law imposes the duty to notify the State organ of religious affairs and the state authorities about any of these changes, and the role of authorities and limits of their competences are unclear. Thus, in 2002 the Committee on Affairs of Religion under the Government of the Republic of Tajikistan together with the Council of Ulems of the Republic of Tajikistan organized control examination among the religious officers of the Isphara disrict of Sogd region. As a result of this examination, three imams – members of the Party of Islamic Renaissance of Tajikistan – were dismissed. At the same time, there is no case of examination or dismissals registered with regard to the religious organizations of non-Islamic confessions. Thus, the legal equality of the religions is not followed in practice.

Governmental interference with religious organizations is high. The cases are known where the madras (secondary religious school) were forced to suspend their activities (for example, in 2003 in Ispahara district of Sogd region.)

In Tajikistan, the religious organizations are required to register. The registration procedure is quite complicated and there are numerous cases of abuse by the local administrations. The Law requires that the citizens creating a religious society, a mosque (minimum 10 people aged 18 and older) shall apply to the local Khukumats and include the Statute of the society, mosque in order to get legal capacity. If a society is part to some religious organization, it shall be stated in the Statute and the relevant religious department shall confirm it. The Khukumats shall consider the application within one month and register the Statute of a society, a mosque with consent of the State organ for religious affairs. The Khukumats have the right to require additional documents and request the experts' opinions.

As results of such excessively hard and uncontrolled procedure for registration, the local Khukumats often violates the time limits for registration. The cases are known where only after direct appeal by the Central organs of some religious organizatons, the registration of local societies was accepted. In some cases, unexplained refusals in registration take place. A refusal to register the local council of Bakhai, in Naussky disctrict of Sogd region is an example to such practice.

The cases are known where the representatives of the local authorities make official warning to the management of non-Islamic organizations in order to prevent them from accepting ethnic Tajiks and Uzbeks as their worshipers. Possible scandals are given as the only explanation.

Despite the fact that no limitations should be imposed concerning the number of religious organizations of the same confession, the local authorities sometimes impair the registration of the organizations of the same non-Islamic confession in the same locality. This problem occurred for example when the Evangelic Baptists Christian Church in Nurek town divided into two organizations.

Article 6 of the Law separates the system of general education from the religion and provides for the right of religious organizations to create their own educational institutions. In order to open a religious educational institution, a permission of the central department of the relevant religious organization shall be presented. This impede the realization of this right by the organizations of non-Islamic confessions as generally their worshipers belong to religious minorities, their number is quite limited and they have no central departments in the country.

Professionally Islam is taught in the Islamic University and in Madras (secondary level). Nowadays, there is one Islamic University and 18 madras in the country, including women's madras. There are also the groups of Islamic Studies under different mosques that give the certificates to private teachers (with the permission of regional and local Councils of Ulems.) In Sogd region some women – teachers of Islam have official certificates. Thus, there are the opportunities to get Islamic education through either formal or non-formal system.

Children can follow the religious education of any confession starting from 7 years old and the written consent of parents is required. Their own consent is required only when they are 16. The religious education shall not impede their general studies at school.

The main tendency in the spiritual education for all non-Islamic confessions was to create Saturdays, Sundays and periodic schools and educational programs for children and adults. Most of these programs and school have awareness-raising character and cannot provide participants with professional religious education. The National Spiritual Council of Bahai once proposed to the Committee on the Affairs of Religions to open a religious educational institution or a department under the Islamic University, but its initiative was got no support.

There are cases of restrictions on conducting the awareness-raising campaigns by non-Islamic organizations in the regions of the country. Thus, in 2004 in Kurgantube town of Khatlon region the Church of Adventists of Seventh Day organized an exhibition on health problems. When a speaker touched upon the issue of spiritual health, the local security services required immediately suspension of the activity. This happened despite the fact that the Church had the permission for this gathering obtained from local administration.

There are some contradictory tendencies in the activities of the religious organizations in the country. There is a number of Islamic centers (departments) that have certain unofficial but very influential supervisory role for the Islamic organizations. The missionary outreach is less developed and not encourage among the Islamic organizations. Most of non-Islamic confessions are represented through missionary organizations. Often, foreign citizens lead these organizations. They generally do not have any supervision/structure even between the same confessions. Thus, the restrictions and violations of rights of Islamic and non-Islamic organizations are of different nature.

The Central Council of Ulems of Dushanbe city often restricts the rights of Moslems. Thus, in August 2004, it issued an order prohibiting to women to attend the Fridays' prayers at the mosques. Before that, Imams of numerous mosques were inviting women to the Fridays' prayer as it is very important for life of Moslems and for development of religious morals.

There were serious religious disputes on the matter of women attending mosques. In 2004, Hodzhi Akbar Turadzhonzoda published the book where argues that Koran does not prevent women from attending the mosques. Moreover, the relevant order of the Council of Ulems contradicts to the constitutional guarantee of rights of men and women, and to the constitutional right of every person to participate in the cults, practices and rituals of his/her religion.

The Hajj is allowed but there are the limitations for ground trips to Mecca, quote of a number of people going to Hajj by land. In 2005 also an age censure was introduced – 18 years and older. Due to the quote, many people have to buy tours from travel agencies or pretend they are going to a sport tour. Before 2005, often people going to Hajj were taking with them minors starting from 12 years old. Now it is not possible.

The activities of the Islamic Hizb'Ut Tahrir party that has an aim of creating Islamic Khalifat that would include the territory of numerous countries are prohibited in Tajikistan. During the years 2000-2004 there were 237 criminal cases initiated against its members. There are numerous violations of the rights of its members, especially at the moment of arrest and during the investigation. Often, people are persecuted for only possessing Hizb'Ut Tahrir leaflets.

In general, the problem protection from coercion and from discrimination with regard to the freedom to have or adopt the religion by one's choice is very acute in Tajikistan. On one hand, there are legislative provisions ensuring this right. In additional to the Constitution and the Law mentioned in this Chapter, the Criminal Code also prohibits impeding the activities of religious organizations or the religious practices that do not violate the law, public order and the rights of others. It also prohibits discrimination based on religious grounds. It was only one criminal case initiated during the years 1999-2003 that ended with a court sentence related to these problems.

The coercion in the choice of religion and the pressure to quit the chosen religion is widespread among the population. According to the official statistics, 97% of the population of Tajikistan belongs to Islamic confessions. The opinion polls conducted in the country shows that 58% of responders think that ethnic Tajiks and Uzbeks shall only be Moslems, as it is the traditional religion of these people, who's "fathers and grand fathers always belonged to Islam." Only 8% of responders expressed tolerance towards the idea that their relatives can adopt another religion.

The level of tolerance is considerably higher in the capital of the country than in the regions. In Dushanbe, there are 37 registered and 1 non-registered organizations of non-Islamic confessions. In all other regions, there are 37 registered and 5 non-registered non-Islamic organizations; all of them are located in the regional centers.

In the rural areas (according to the opinion polls of 2005) about 92 %, so the absolute majority does not accept the idea that their relatives, countrymen could adopt a religion different of Islam. This opinion is widespread even in the village encountering the capital.

The cases of discrimination and persecution of members of religious minorities by other individuals exist. Numerous facts of insults and some facts of beating of members of "Bahai" society are known. As a general rule, the members of non-Islamic organizations do not apply to law enforcement bodies for protection for different reasons, including the following:

- It is hard to prove the fact of pressure, psychological violence and even of beating;
- Lack of appropriate procedures and general ineffectiveness of investigation of such cases;
- Moral reasons that the religion asks people to pardon the others;
- Lack of understanding and often aggressive attitude of law enforcement officers.

In some instances members of "Jehovah Witnesses" presented the complaints to prosecutors regarding the interference of their relatives with their private life, impeding them from attending the meetings and other pressure from relatives, neighbors and others. There was no criminal case initiated on such complaints. No civil lawsuits on discrimination on religious grounds is known either.

Students, ethnic Tajiks that adopted non-Islamic religions, report the cases of pressure in different educational institutions. They are subjected to insults or the "conversations" with "educators" (each educational institution has a special position of educator) that pressure them to change their religion.

The criminal cases are generally initiated only by the facts of serious crimes. Thus, after in 2000 the explosion took place in the missionary center "Sonmin", and tens of people were wounded and killed, the criminal case was initiated. First, the charges were brought on the Articles "Murder" and "Terrorism", then, the court dismissed the «terrorism» charge. The law enforcement bodies recommended to the "Sonmin" center to have the armed guards and provided the center with some officers.

In 2000-2001 three members of National Spiritual Council of Bahai were murdered. The military prosecutor office initiated the investigation on these cases. There were court proceedings on the fact of murder of two of Bahai members, foreign citizens. But still there is no result of investigation on the murder of the third Bahai member, who was a citizen of Tajikistan.

Legislation of Tajikistan provide for alternative non-military service on religious grounds. But no case of applying this right is known.

There are no mosques or visits by clergy in the army. The hygienic conditions in the army buildings do not allow the Moslem to pray. The only mosque and Christian church in the army are locate in the motor rifle division 201 of Russian Federation located on the territory of Tajikistan.

The right of prisoners to possess the objects related to their religion is limited. They have the right to have the Bible or Koran, but other objects related to religious practices are not allowed.

ARTICLE 19[27]

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 30 of the Constitution of the Republic of Tajikistan guarantees everyone the freedom of speech, press, and the right to use the media. State censorship and persecution for criticism are prohibited. The list of information that qualifies as state secretes shall be established by the law.

Restrictions of rights and freedoms of citizens shall take place only for the respect of the rights and freedoms of other citizens, public order, protection of the constitutional system and territorial integrity of the country (Article 14 of the Constitution of the Republic of Tajikistan.)

During the post-conflict peace-building period (1999-2004), some advancements in the development of the freedom of speech were made in Tajikistan - creation of new independent newsletters and issuing of broadcasting licenses for independent radio stations. For example, in 2003 Reporters sans frontières classified the level of the freedom of speech in Tajikistan as highest among the CIS countries. Despite this, the government of Tajikistan failed to adopt consistent policies in order to reinforce democratic principles of freedom of speech and media in the country. Attempted legislative reforms have had adverse affects. Numerous amendments to the media legislation have actually further degraded freedom of speech and press.

I. Access to information

One of the most acute problems for Tajik journalists is access to socially important information. Information from governmental sources is particularly hard to obtain.

The rights of journalists to free access to information are stipulated in the laws of the Republic of Tajikistan "On Television and Radio Broadcasting," and "On Press and other Media." Articles 5 and 27 of the Law "On Press and other Media" oblige the state, political, public organizations and officials to provide the media with necessary information with the exception of state secrets or other secrets protected by law. Moreover, Article 25 of the Law "On information" of the Republic of Tajikistan prohibits imposing any restrictions on access to public data (called "open information")

[27] The data for the chapter on article 19 was provided by the National Association of independent media of the Republic of Tajikistan

Despite the fact that the Constitution and the laws of Tajikistan guarantee journalists and every citizen in general the right to freely receive and impart information with the exception of data that constitutes a state secret, the authorities restrict journalists' access to socially important information in several ways. These include direct and indirect refusals of different officials to provide the information, ungrounded refusals to accredit the journalists, favoritism and privileges of the governmental media in getting the information (if compared to independent and opposition media.) Practice shows the unwillingness of authorities to cooperate with the independent media. Cases where officials refuse to provide a journalist with the data (s)he requests, asserting that this data constitutes a secret, or ask a journalist to get the permission of the head of the relevant agency (and the head is generally absent or does not have time to talk to the journalist) are widespread. Numerous cases are known where officials refused to provide a journalist with data for the sole reason that their boss was absent. Often high-level officials prohibit their employees from giving out any information without their permission.

In many cases, the officials were asking a journalist to make his/her request for information in written form despite the fact that the legislation provides for the possibility of oral requests as well. As a rule the journalists need to receive the information immediately or very fast, and the oral requests are the most appropriate for them.

Remote regions of Tajikistan suffer the most restricted access to information. In Dushanbe, the capital, journalists still manage to get information by different means; in remote regions it is much harder. Oblasts' (province) and Rayons (district) khukumats (administrations) give out data only when higher level officials agree to it and if they find such information "appropriate." Due to their remoteness from the informational centres, the lack of legal knowledge on the parts of both sides (press and government) and the local governments' "I am the law" attitude, the societies of the remote regions are deprived of information on important events.

Monitoring of Freedom of Speech in Tajikistan confirms the above-mentioned conclusions[28]. **The Monitoring Service of NANSMIT during the years 2003-2004 registered 428 violations**. The data analysis shows that the restrictions or refusals of access to information by the officials are the most widespread violation of the freedom of speech. **139 cases** are registered with regard to this violation. There is no aggregated data on the access restrictions of journalists to official information from the year 1999. In general, the fewest violations were during the years 2000-2001. But this may be due to the lack of information as during these years there was no local NGO in Tajikistan conducting regular monitoring of freedom of speech. The only organizations that conducted monitoring of violations of Tajik journalists' rights was the Centre for Journalism in Extreme Situations (Moscow) that had a limited number of correspondents and could not have a comprehensive countrywide survey. In 1999 there were no local or Russian organizations conducting monitoring in Tajikistan.

Several factors contribute to violations of journalists' right to access to socially important information:

- Lack of professionalism and knowledge of the officials;
- Fear to give out "inappropriate" information and to be fired for that reason;
- Failure of the legislation to establish concrete sanctions for refusal of access to information;
- Law professionalism and lack of legal knowledge of journalists themselves;
- Unwillingness of journalists to confront officials;

[28] The National Association of the Independent Media of Tajikistan (NANSMIT) conducted this monitoring in the framework of the USAID-funded project "Protection of the democratic principles of the freedom of speech in Central Asia." NANSMIT also uses the results of its other activities conducted with the support of the Swiss Development Cooperation within the project of Media Support in Central Asia.

- Lack of trust in journalists from officials (often, journalists misuse the information received.)

The Criminal Code of the Republic of Tajikistan provides for the criminal responsibility for the refusal to provide a citizen with information (Article 148) and for impeding the professional activity of a journalist (Article 162.) In the course of years 2000-2004 there were no criminal cases initiated on charges related to these articles. There is no information on any official complaints filed by a journalist or a media organization about illegal restriction by officials of their access to information. Some of reasons why journalists do not fight for their rights are:

- Lack of legal knowledge of journalists, in particular, with regard to the procedure of appeal to justice;
- Fear of worsening the relationship with authorities;
- Legal nihilism in post-conflict society and special mistrust in the judiciary;
- Lack of legal precedents

Thus, there are a number of subjective and objective reasons that make access to socially important information, official information in particular, difficult in Tajikistan.

II. Restrictions and violations of the freedom of speech

In recent years there have been more and more cases of threats on and pressure and persecutions of Tajik journalists. In 2003-2004 alone, the Monitoring Service of NANSMIT registered 20 cases of the treats to journalists directly related to their professional activity. Often such threats are given through telephone conversations, and it is quite difficult to prove to the law-enforcement bodies that such threats really were given. The journalists M. S., M. I., and T. D. are among those who receive the biggest number of threats as they publish very critical materials related to the political and social issues of Tajikistan.

One of the most grave examples of persecution of a journalist due to his professional activity is the arrest of D. A., the founder and editor-in-chief of an opposition newsletter "Charogi Ruz" that is published in exile. Mr. A. was arrested on July 6, 2001 in the Moscow airport Sheremetyevo-1 by the request of the authorities of Tajikistan. The officers of Prosecutor General of Tajikistan initiate a criminal case against A. He was charged with the public insult of the President of Tajikistan, incitement to overthrow of the constitutional system of Tajikistan and to inter-ethnic hatred. In summer 2002 the criminal case was dismissed in accordance with the Law "On General Amnesty." Nevertheless, according to Mr A., he still gets pressure and is persecuted by Tajik authorities.

The NANSMIT Monitoring Service in 2004 had registered one case of assault on a representative of the independent media. On July 29, 2004, Mr R. M., the editor-in-chief of an independent newsletter "Ruzi Nav", was assaulted in the street near his apartment house on Sino avenue in Dushanbe. The person who attacked him was not identified. The journalist was beaten about the head with a hard metal object, and suffered a severe brain injury. He was brought then to the rehabilitation department of the National Clinic Hospital # 3.

According to the data of the Center for Journalism in Extreme Situations (Moscow), four journalists (F. E., S. R., D. K., R. S.) were killed in Tajikistan from 2000 to 2002 for different reasons, and there was one murder attempt on K. M. U. M. Six cases of assault on journalists (S. M., V. K., N. N. (twice), N. Z., B. V.) were registered during the same period, as well as six cases of threats and one kidnapping of a journalist. All of these murders, assaults and threats were somehow related to the professional activity of journalists.

Law-enforcement officers were involved in three cases of assault. According to the data of the Centre for Journalism in Extreme Situations, on August 27, 2000 at 7 pm N. N. (D.), a journalist from a governmental newsletter "Dzhumkuriat" was assaulted by police officers while he was waiting for his bus. Suddenly, a "Zhiguli" car stopped near him, and there were some people in civilian clothes inside it. Later, it became clear that two of them were officers of the Department of the Ministry of Interior on prevention of drug trafficking. They called the journalists to their car and requested to see his card. The journalist took his card from his pocket and showed it to one of the police officers. Then, the officer took away his card and forced the journalist to get into the car that went in the direction of the Ministry of Interior. On the way, the journalist was beaten. The journalist was brought to the Ministry, and the beating continued in one of the rooms. While beating him with a rubber truncheon and pistol-whipping him, the police officers wanted him to divulge the names of drug users. The journalist was released late in the evening of the same day thanks to the interference of F. G., the deputy-head of the same department. The journalist applied to the National Clinical Hospital #3 where it was discovered that he had a concussion, and the membrane of his left ear was injured. According to D. himself, he decided do not appeal to the prosecutor with to investigate this crime, as he feared retaliation from the officers of the Ministry of Interior. Based on the facts described above, the Foundation for memory and protection of journalists' rights sent a letter to the Minister for the Interior. The letter spoke about the severe beating of a journalist and also contained a request to adopt necessary measures to prevent any similar incidence in the future. According to M. B., the President of the Foundation, there was no official reply.

Article 36 of the Law of Republic of Tajikistan "On press and other media" provides for bringing to responsibility anyone who coerces a journalist to disseminate or to restrain from disseminating any information through violence against him/her, destroying his/her property, or violations of journalist's rights through threats. A threat of serious injury or murder, if there are grounds to fear that such threat would be executed, constitutes a criminal action prohibited under article 120 of the Criminal Code of the Republic of Tajikistan. A journalist has the right to apply to the bodies of the Ministry of Interior that bear the investigation duty on such crimes.

Nevertheless, there is only one case known where a criminal investigation was opened – the case of assault on R. M., the chief editor of "Ruzi Nav" newsletter. None of other facts of assaults, threats and interference in the journalists' activity was investigated, there are no criminal cases open. This is due to the fact that the victims themselves did not present complaints to law enforcement bodies. The Tajik journalists prefer to keep silent about the pressure on them for a number of reasons. First, they do not believe that a proper investigation would be held if they complain to the law enforcement bodies. Second, many journalists think that complaining to the law-enforcement bodies would be simple waste of their time, and they would not get any results from such complaints. There is a general mistrust of law enforcement bodies and the judiciary in Tajik society, they are not seen as independent or impartial. Third, some journalists expressed the opinion that information on the pressure against them would have a negative effect on their reputations and the reputations of their families.

Article 19 provides for possible restrictions of the freedom of expression. But such restrictions shall not be excessive. The legislation of the Republic of Tajikistan provides for a number of restrictions with regard to the freedom of expression.

For instance, publishing and disseminating in the media data that constitutes state or other secrete protected by law, or contains incitement to the violent overthrow or change of the constitutional regimen, or data that offends the honor and dignity of the State and the President, the propaganda of war, violence, cruelty and terrorism in all forms, of racial, national, religious

superiority or intolerance, pornography, and incitement to other crimes are prohibited according to Articles 6, 22 and 34 of the Law on "Press and Other Media" and to Article 28 of the Law "On Television and Radio Broadcasting".

Moreover, the use of media for interference with the private lives of citizens, attacks on their honor and dignity is prohibited and shall be persecuted in accordance with the Law.

Special concerns arise around the article of the law that provides for responsibility of a journalist for dissemination of data that defame the honor and dignity of the State and the President. The existence of such a clause in the legislation creates conditions for persecution of journalists and independent media for the simple act of publishing negative material about the president and about the activity of the government of Tajikistan. Moreover, the authorities use the media controlled by the government ("Dzhumkhuriat", "Sadoi Mardum", "Narodnaya Gazeta", "Minbari Khalk", "Khalk Ovozi") for reprisal against independent media and journalists. The situation with Ms. Mavluda Sultonzoda, correspondent of independent newspaper "Ruzi Nav" illustrates this method of pressure.

M. S. published an article "Rakhmonov kist" ("Who is Rakhmonov") in an independent national newspaper "Nerui Sukhan" # 29 (75) of July 15, 2004. The main idea of the article was to discuss the phenomenon of modern life in Tajikistan where the shocking poverty of the population of the country coexist with the building of extremely rich palaces, country houses and villas; buying expensive cars, holding expensive weddings ceremonies, paying hundreds of thousands of dollars for a simple medical operation in Europe by "close and distant relatives, countrymen, and people from the environment of the president Rakhmonov." According to the author, "daughters, sons-in-law, relatives of the president already appropriated everything that was possible in the country." The article was written in a form of general philosophical discourse in Tajik language, in general words without stating any concrete facts from life of the president Rakhmonov.

Soon, the parliamentary newsletter "Sadoi Mardum" and the governmental newsletter "Dzhumkhuriat" (# 86 of August 3, 2004) – the latter was founded by the president of the Republic of Tajikistan – publish a response article signed by someone under name T. S.. The article "Who is she, Sultonzoda Mavludai Abdullo" analyzed in details biography and private life of M.Sultonzoda. At the same time, T.S. avoid to give any answer to the questions that Ms S. had put in her article. T.S. just describes where and when Ms S. was born, how she allegedly became a second wife, how she worked in the kitchen, in the offices of different organizations including the presidential apparatus, how she was punished for her absence from work and other infringements of rules.

III. Censorship and self-censorship

Article 30 of the Constitution of the Republic of Tajikistan prohibits state censorship and gives every person the right to freely express his/her beliefs and opinion, and disseminate them in the press and other media in any form. Article 6 of the Law of the Republic of Tajikistan "On Television and Radio Broadcasting") prohibits any interference of the state bodies, local authorities, officials, political parties, public associations, and private persons with the creative activity of TV and radio organizations, as well as state censorship and persecution for criticism.

Nevertheless, the analysis of the conditions of activities of journalists and media in Tajikistan reveals numerous attempts at illegal censorship. Representatives of local authorities as well as editors and founders of media often practice censorship and interfere with the professional

activities of the journalists. According to the data of NANSMIT, seven cases of censorship were registered in 2004. The Center for Journalism in Extreme Situations (Moscow) also registered five cases of censorship during 2000-2002.

Remote regions of the country suffer the most from censorship. Often, representatives of local authorities require journalists to get their approval for the topics to be discussed during TV programs or published in the press. They also require seeing the articles or tapes before they are published or broadcasted. According to the data of the Center for Journalism in Extreme Situations, on October 12, 2001 the mayor of the town of Istaravshan of the Sogd region adopted a decision to create under the Khukumat (local state administration) the Council on Control of the publication of local printing houses, media, television and radio broadcasting. Mr. Mirzomurod Khoshimzod, the chairman of this Council, argues that the creation of this Council does not mean introduction of censorship and restriction of the freedom of expression. Another well-known case of attempted political censorship comes from the Khatlon region. The chairperson of the administration of this region, Mr Amirsho Miraliyev, gave to the officials an order to prevent any negative publications in the press that would concern any events in the Khatlon region.

Self-censorship is still largely practiced by journalists, and may be described as one of general characteristics of Tajik journalism. Journalists in Tajikistan have a habit of adapting their comments in such a way as to make them acceptable to the authorities. The majority of Tajik journalists and media try to avoid problematic topics while discussing political, social and economical life of the country. Journalists generally do this for fear of negative consequences for them personally, and in particular, possible psychological or physical violence from the representatives of the authorities. The reasons for self-censorship by heads of media organizations are related to the fear that their organization would be suspended or even closed by fiscal or law-enforcement bodies.

Thus, the illegal censorship and self-censorship as a result of direct and indirect actions of the representatives of Tajik authorities of different levels limit the practice of freedom of expression and freedom of the press in particular.

It is hard to monitor other types of unofficial censorship – censorship inside an edition and the censorship on behalf of the founder of a media organization. These types of censorship most likely exist when the administration of a media organization decides do not publish information that might provoke persecution from authorities. It is possible that the owners of media organizations – founders and investors – take a similar position in certain cases.

All of the above reasons contribute to the situation that a range of topics stay uncovered by the media in Tajikistan. An example of such a topic is the corruption among high-level officials. In general, media avoid criticizing officials of the high level administration of the country.

IV. Persecution of journalists and media through criminal procedures and civil law suits.

Article 135 of the Criminal Code of the Republic of Tajikistan provides for criminal responsibility for libel (for dissemination of knowingly false data that offends the honour and dignity of another person or attack his/her reputation.) Libel that is disseminated through public speeches, publicly demonstrated edition or in the media is qualified as aggravated. Article 136 of the Criminal Code establishes criminal responsibility for insult (so, for humiliating the honour and dignity of another person using in indecent form.) Criminal legislation provides also for special protection for state officials. Thus, Article 137 of the Criminal Code protects the President from libel and insult and Article 330 protects the representatives of the state authorities

from insult. According to the "Principles of the Freedom of Expression and Protection of Reputation" adopted by an international organization "Article 19", the criminal responsibility for libel and insult does not correspond to the guarantees of the freedom of expression. The fear of criminal prosecution and sanctions, in particular, of deprivation of liberty has a chilling effect on freedom of expression.

During the years 1999-2004, criminal cases on the charges of "libel disseminated in media" (part 2 of Article 135 of the Criminal Code) were opened against three journalists – D. A., N. A. and M. B.. It is also known that three journalists were found guilty (following suits brought by Kurbonali Mirzoaliev, the Chair of the Voseisky region, against the newspapers "Samar" and "Istikol."

The criminal case of D. A. was dismissed according with the Law of the Republic of Tajikistan on "General Amnesty."

The investigation on the criminal case of Mr. A. and Mr. B. is now being investigated. The investigation was opened against the journalists on the grounds of publication in the newspaper "Nerui Sukhan" of some articles stating that a professor Tajik State National University, Mr. Negmat Abdullaev, received a bribe from a student.

The Criminal Procedure Code does regulate an appeal procedure on the initiation of criminal investigation by a person against whom such investigation was initiated. Prosecutors are given the right to dismiss the decision of an investigator/body of inquiry on the opening of a criminal case in cases where a criminal case was initiated without legal grounds and reasons. The prosecutor can either refuse initiation of a criminal case or stop it once it has been initiated.

The Civil Code of the Republic of Tajikistan provides for protection of honour, dignity and professional reputation of citizens and legal entities. In disputes related to honour and dignity and examined by the courts in accordance with Articles 172 and 174 of the Civil Code, a citizen has a right to require a confutation of the data that defames his/her honour, dignity or professional reputation. A media organization bears the responsibility to proof the credibility of the disseminated data, and a plaintiff shall prove the facts of the violation of his/her rights to honour, dignity and/or professional reputation. A media organization would be brought to responsibility only if a publication contained data and not opinions and beliefs. There is no responsibility for opinions and beliefs under the current legislation. Moreover, this data must be wrong (incorrect or not credible) and offend the honor, dignity and professional reputation of the plaintiff. If these conditions are not met, the media organization shall not be liable.

The law provides also for compensation for moral damages (Article 38 of the Law "On Press and other Media," Articles 1115, 1116 of the Civil Code of the Republic of Tajikistan.) The amount of compensation shall be determined by a court and depends on the character of the physical and moral suffering of the victim. A court shall determine the amount of compensation based on the principles of the reasonableness and justice. In reality, judges often do not follow these principles and impose inproportionally high fines on the media. For example, in its decision in the suit of Abdullaev against "Nerui Sukhan" weekly and the journalist A., the court established that 50,000 somoni shall be paid for compensation. This amount constitutes 4,167 minimal monthly wages. Such compensation raises doubts on the future survival of independent media in the country.

There were nine known civil cases on protection of the honor and dignity of officials examined by the courts during the years 1999-2004. In two of these cases, the media was obliged to publish

a confutation and pay the compensation for moral damages. In two other cases, the court established that the complaints of officials against media were unfounded. Two other cases were dismissed due to the amicable agreement between the officials and media. Other cases were under consideration when this report was prepared.

V. Media registration

Articles 9-15 of the Law «On Press and other Media» determine the system of media registration. A media organization can start its activities after registration in the State Notaries on the basis of its constituent documents and the acts of the Ministry of Justice and the Ministry of Culture. Only media published in less than 100 copies are exempt from this rule. These requirements of the Law put up serious obstacles for the media and in some cases create the opportunity for abuse.

There is no statistical data on the number of applications for media registration, and on the results of these applications- registration of media or refusal of registration. Two cases of refusal are known – one refusal was due to the decision of the Ministry of Justice, another one of the Ministry of Culture in December 2004.

The founders of media organizations often had numerous problems due to inaccuracies and contradictions in legislation and legal practice. Especially serious are the problems in the regulations concerning electronic media. Another problem is that the representatives of the executive often interpret the laws in the way suitable for them and apply laws differently to different media. For instance, in 2004 amendments were introduced to the Law "On Television and Radio Broadcasting" with no assignment of jurisdiction over licensing television and radio broadcasting. By unknown means, some media organizations got broadcasting licenses - TV "Sport-Plus" (Khudzhant city), Radio "Orient" (Dushanbe city.) At the same time, four other media organizations have not been able to get a license for the last two years (2003-2004.) According to the legislation of Tajikistan, electronic media shall be registered and obtain license for broadcasting, but such a license is extremely difficult for newly created media organizations to obtain.

Certain "double power" existed in the registration of the print media from May 2002 until November 2004. According to the law, the print media shall obtain a registration act from the Ministry of Culture and then be registered in the notaries. In reality, there are a number of newspapers in Tajikistan registered without rights of legal entities. The state authorities "noticed" this gap in the legal practice before the start of campaign for parliamentary elections at the end of 2004. They used this gap as a measure to prevent new alternative media from registration before such important political events in the country. There is data stating that at the end of 2004, the Ministry of Justice and Ministry of Culture had about 30 applications for media registration. At the same time, there were no cases of judicial appeal on refusal of registration.

Still, in January 1, 2005 the legislation fails to identify one competent body that shall be responsible for a unified media registry. Thus, the data on media currently existing in Tajikistan needs clarification.

VI. MEDIA LICENSING

Licensing is the biggest obstacle for the development of television and radio organizations in Tajikistan. The Law "On Television and Radio Broadcasting" adopted on November 14, 1996

and numerous times amended regulates the activity of television and radio organizations and determines legal, economical, social and structural conditions of their functioning.

During the last eight years, according to the above-mentioned law, the Committee on Television and Radio Broadcasting under the Government of the Republic of Tajikistan, had the competence related to licensing of electronic media. On May 25, 2001 this Committee adopted Decision # 91 approving the "Regulation on the licensing in the sphere of Television and Radio broadcasting" – one of the last regulation on licensing developed by the Committee. The Regulation provided numerous grounds for refusal of licenses among others: "lack of necessity of such broadcast program", "the program does not correspond to the national interest of the country", "there is no need for such program in this region." Moreover, the Regulation was providing the Committee with discretion to refuse to provide a license for "other substantive grounds and reasons." It shall be noted that Article 35 of the Law "On Normative Legal Acts" required every legislative act (with exception of those that constitute state secret or another secret protected by the law) to be published, as well as every generally applicable act of ministries, state committees and departments. Generally applicable means that such acts are applicable to enterprises, institutions, organizations that are not under direct subordination of the relevant state body adopting the act, and applies also to citizens and their associations. Any such act shall enter into force only after its publication in the official media (this procedure was established in accordance with amendments to the Law of December 11, 1999 # 906.) the Regulation on licensing never has been published and so shall be null and void.

Nevertheless, the Licensing Commission of the Committee on Television and Radio Broadcasting was making decisions on granting (or refusing) licenses to electronic media based on the said Regulation. Numerous local and international human rights organization criticized this fact. The applications for licenses were considered for several months, and sometimes years. The lack of any limitations of time for considering the application contributed to delays.

Finally, on February 28, 2004 the president of the country signed a new law "On amendments to the Law On Television and Radio Broadcasting" that was adopted by the Parliament in December 2003. According to the Article 12 of the Law, the granting, prolonging, suspending, stopping and time for validity of the licenses shall be defined by the Government of the Republic of Tajikistan. The text of the Law itself does not identify the order of grating and refusing the licenses.

Another law was adopted on May 17, 2004 – the Law on "Licensing of several types of activities." This law gives a chance to regulate in a civilized way the issues of licensing including the licensing in the sphere of the Television and Radio broadcasting. Before this Law was adopted, all the main issues were regulated by by-law acts of ministries and departments. The Law on Licensing shall be directed at creating a unified state policy in relation to the licensing, at creating a unified list of activities for types of activity that require a license and shall regulate the rules for licensing on the territory of Tajikistan. Moreover, it defines the competences of the authorities and of bodies responsible for licensing. The Law established a 30-day time period for the examination of applications for any license. According to Article 10 of the Law, a license can be refused only in two cases:

- Where the documents provided by the applicant contain false and misinterpreted information;
- Where the objects owned or used by the applicant do not correspond to the requirements and conditions mandatory for the relevant type of license.

Two laws regulate the issue of licensing in the sphere of television and radio broadcasting – the Law of the Republic of Tajikistan "On Television and Radio Broadcasting" (Of November 14,

1996) and the Law of the Republic of Tajikistan "On Electrical Connection" (Of April 10, 2002.) that stipulates a practice of so called "double licensing." According to Article 12 of the Law "On television and Radio Broadcasting" the electronic media shall obtain a license for broadcasting and the rules for obtaining such license shall be established by the Government of Tajikistan. This license gives to its holder the right to obtain in accordance with Article 16 of the Law "On Electrical Connection" another license for activity in the area of communication. The second license shall be obtained in the State Inspectorate of Communications of the Ministry of Communications of the Republic of Tajikistan. It would be useful to simplify the licensing procedure while developing a new Regulation on licensing in the sphere of television and radio broadcasting.

For the time being, the Regulation on licensing of May 25, 2001 has lost its effect. For several months after the new Law went into effect but the procedures were not developed; there is a lack of regulation on licensing and interested television and radio organizations still cannot obtain licenses.

Some of amendments to the Law on "Television and Radio Broadcasting" worsened the situation of media. According to the previous norms, the license was necessary only for broadcasting, and after the amendments the production of audio and video materials shall also be subject to licensing.

The Government of Tajikistan is now in the process of developing a draft of a new Regulation on Licensing of Certain types of activities. Access to this draft regulation is limited. The draft was not publicly discussed. Despite the fact that the Law provides only for two grounds for the refusal of a license; the new draft regulation provides for additional grounds such as:

a) In the relevant region there are no free broadcasting waves;
b) The production (programmatic) and broadcasting (transmitting) bases of the applicant do not correspond to the requirements of radio, and television broadcasting technology.

These requirements are ungrounded, as they are not provided for by the Law. Moreover, contradictory to Article 6 of the Law, the Draft Regulation provides for the qualification examination of the chairpersons and specialists of the radio, and television organizations, and the licensing body shall establish the specifications of such exams. There are many indications that the Government of Tajikistan plans to entrust different bodies of the executive with jurisdiction over licensing, and such bodies would not meet any criteria of independence.

VII. Dissemination of information

The legislation of the Republic of Tajikistan guarantees the freedom to disseminate ideas and opinions in any form in the press and other media. The distribution of media editions is conducted by the editors, by the communications networks, other organizations and individuals. Despite these guarantees, in August 2000 the officers of the local department of interior of the Pendzhikent town of Sogd region prohibited to K. S., a member of the Union of Journalists of Tajikistan, to distribute the newsletter "Paem" ("News") published by Tajiks living in Moscow.

Impediment to the lawful dissemination of the media production including seizure of all or part of copies of a edition shall take place only if ordered by the decision of a court. Nevertheless, cases of the seizure of newsletter editions without a court order are known. On November 4, 2004 in the airport of Dushanbe, the fiscal police confiscated the edition of «Ruzi Nav» weekly that was printed in Bishkek, Kyrgyzstan. On August 18, 2004 officials from the Ministry on revenues and taxes came to a private printing house "Dzhiehkhon" at the day of issue of an edition of "Nerui Suhan" weekly, and verified if the number of printed copies of the newsletter

correspond to the number officially declared. According to the preliminary data, the real number was about 7,000 copies while only 2,700 were officially declared. The officials seized the whole printed edition and sealed up the printing house. Due to these events, three more newspapers could not print their editions – "Ruzi Nav", "Nadzhot", and "Odamu Olam." All mentioned newspapers are characterized by their publication of strong critiques of the authorities. Mr M. B., the editor-in-chief of the newspaper "Nerui Suhan" said that although the printed data stated the number of 2,700 copies (it was an old number), the application for printing the edition officially stated 7,000 copies. Still, for this reason obstacles were created not only for "Nerui Suhan", but also to "Ruzi Nav" and "Odamu San" newspapers.

In Tajikistan there is no independent printing press. The only specialized printing press "Sharki Ozod" is under control of the executive apparatus of the President of Tajikistan. Cases are registered where the management of this printing press refused to print the newspapers that are not in "favor" of the government.

On August 23, 2004, Mr. A. D., the editor-in-chief of "Nadzhot" weekly (belonging to the Party of Islamic Renaissance of Tajikistan) applied to Mr D., the Director of the "Sharki Ozod" printing press with a letter requesting printing services for "Nadzhot." Mr D., without providing any explanation, stated that the printing press does not have authority to print "Nadzhot" and ordered the general department of the printing press not to register Davlatov's application. The latter said that he would have to complain to the Presidential Apparatus and got the following answer: "You can complain wherever you'd like to, we will not publish your newsletter."

Covert pressure was applied to the administration of private printing houses in order to impede the publication of the independent and party newsletters, "Nerui Sukhan", "Ruzi Nav", "Odamu Olam," and "Adolat." The directors of the private printing houses under different pretexts refuse to print non-governmental editions. According to unofficial data, the printing houses feared losing their businesses, as the authorities can put pressure on them through fiscal and other control bodies. According to Mr A., the editor-in-chief of the Newsletter "Charogi Ruz" printed in Moscow, the Tajik authorities try to prevent the distribution of the newspaper not only in Tajikistan but in Moscow as well.

Thus, the State by different official and unofficial methods fully controls printing services as well as distribution networks (including private distributors). There is no independent body that would control the activities of media and of printing houses.

ARTICLE 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

In the Republic of Tajikistan according to national traditions the family was always considered as object of protection on the part of the state and society. This protection first of all is caused by that, where the family is not only «the basic cell» of society, but also is an environment for formation of the person. It has found reflection in the article 33 of the Constitution RT.
Basis of the national family legislation is the Family Code of the RT full enough covering and reflecting all aspects of the family right.
The article 6 of the Family Codes says: "If an international treaty of the Republic of Tajikistan lays down other rules than those, stipulated by the family legislation, the rules of the international treaty shall be applied". Thus, on the basis of set forth above it is possible to affirm that norms of the family legislation operational in the Republic are quite sufficient and de-jure provides protection of family on the part of the state and society and do not contradicts to article 23 of ICCPR.

The important indicators of demographic behavior of the population are parameters of marriages and divorces. On the statistical data[29] middle age marrying in the Republic of Tajikistan for men makes 20-24 years, and for girls - 20 years. In 1991 it has been registered 56.5 thousands marriages, in 1994 - 58.8 thousands, in 1997 - 28.8 thousands and in 2003 - 26.2 thousands.
Dynamics of the conclusion of marriages testifies on decreasing of quantity of marriages in 2 times from the moment of pronouncement independence and accordingly on decreasing of the social status of family[30], and it results in washing out of foundations of a society and it in spite of the fact that for the considered period the increase of population remains stably high.

Decreasing of quantity of the concluded marriages is possible to clarify by the presence of several factors:
A) Lack of required quantity of workplaces in the Republic, a high rate of unemployment[31] because of what on official data[32] 220 thousands persons (the overwhelming majority of the man, since 18 till 50 years), and on unofficial data[33] about 1 million persons of able-bodied population are labor migrants on all the post-soviet space.

[29] Statistical data of the State Committee of Statistic
[30] See in the same place
[31] The number of officially recognized unemployed by the beginning of December, 2002 has made 48.1 thousands persons. In August, 2004 has made 1912.5 thousands persons. At the same time, the actual number of the unemployed in the Republic can be higher at the rate of latent and not registered unemployment. The latent unemployment represents a partial employment of the population when because of idle times of manufacture the part of workers is in the compelled holidays or works in a mode of incomplete working week or the working day. Social and Economic Position of the RT for 2002, 2004 years.
[32] According to the data of the Central Electoral Committee at the moment of registration of the voters who are taking place outside the RT.
[33] According to the data submitted by NGOs, from newspaper publications.

If in the first years departure for earnings of labor migrants carried a seasonal nature, than during next years departure has been turn into irreversible character - migrants do not come back on several years, they sending money for the stuffing of family or get new families and do not come back at all. Also emigration to the countries of near abroad to ethnic or economic attributes continuing.
There was an outflow from the Republic of Tajikistan of the big number of highly skilled specialists and workers which conducts to serious easing of scientific and economic potential of the country. In migratory steadiness the negative balance is still saved. The part of spontaneous labor migrants in places of stay has no registration, a residence, the right on using the social blessings, engaged in heavy, not prestigious work[34].

B) The factor which also has influenced for decreasing of quantity of concluded marriages is an essential growth of consciousness of the population. Potential brides and grooms have raised requirements to each other. A large value for choosing of a future marriage partner has his (her) social status, presence of a work, a financial position, opportunities of a career growth, presence of own apartment. And especially for girls it is an opportunity to continue further education, a freedom of choice of a profession, to not limit a sphere of communication and an opportunity for full self-realization because of a marriage.

By virtue of national and cultural traditions the level of divorces in the Republic remains rather low and is not caused at all by low quantity of marriages.

In the Republic of Tajikistan there are a number of factors which do not allow speaking that all marriages concludes on the basis of a free choice. To such factors concerns:
A) Huge influence of parents on a potential choice of the groom or the bride. A plenty of marriages concludes under the offer of parents and bases on their personal choice though it is necessary to recognize, that grooms and brides have opportunity for refusal.
B) For girls one more reason of decreasing in a free choice of the groom is an absence of young guys who have left on earnings.
C) Till now there is a practice of related marriages fatally influencing on a genofund of the nation as a whole.
D) Marrying of minor girls.
Legislatively equality of the rights of spouses is fixed. However not all married women can use the rights. It is connected to national traditions and local customs, depends on region of residing, in what measure the family following of religious canons, remoteness from the large industrial and cultural centers, etc.
The effective mechanism for providing equality of the rights and duties of spouses concerning the entering into a marriage, in marriage and (or) in the case of its dissolution, especially for women could become the stipulated by the Art. 40 of the Family Code of the RT «the Marriage contract» at which all conditions would be stipulated. However, bodies of the registry office and other state bodies which supposed to put into practice "the Marriage contract» do not accepts due measures, do not spend propaganda, explanatory activity with youth.

One of the forms of state protection of the family is stipulated by the item 3 of the Art. 33 of the Constitution - an interdiction on polygamy; in Criminal code of the RT it is fixed in the Art. 170 which provides punishment for polygamy “in a kind of the penalty from 1 up to 2000 thousand minimal wages», that for today makes from 12 up to 24 thousands somoni. At the monthly average salary on the whole Republic in 60 somoni and keeping of the penalty at a rate of 50% from the monthly salary, the penalty will be paid not less than 80 years and if to take into account, that polygamists usually in the age of from 30 and more years - this measure of

[34] The Concept of state demographic policy of the RT for 2003-2015 years.

punishment is unreal and absurd. Other moment of this punishment is that the penalty confiscates instead of the family injured of man's polygamy.
Also the Art. 170 of the Criminal Code of the RT for polygamy provide punishment «as corrective jobs for the term of till 2 years or restriction of freedom for the term of till 5 years». The given measure of punishment does not find any support and understanding at the population. It is necessary to notice, that citizens consisting in a similar marriage, quite often have the high social status and at any moment can be blackmailed or pressured with the purpose of reception of a bribe in an exchange for freedom or to compulsion for acceptance of the necessary decision on the part of any interested structures and persons. For example, to some active politicians this article has been incriminated[35]

It is necessary to note also that the second, the third etc. wives become not young girls, but in overwhelming majority the widows, the dissolved women having from one up to several children or the middle-aged woman capable to make the realized choice and not arranged private life for any reasons. They create the families on the basis of carrying out of religious practice by the Muslim right "nikoh" is so-called «the Tajik variant» civil marriage which is not registered in bodies of the registry office and is the latent form of creation of the family deforming official statistics of concluded marriages.
One of the sides of similar marriages can count as a result of absence of special state programs on support of the mothers - singles having on hands of juvenile children. The grants paid to idle mothers are scanty (make usually from three up to one minimal sizes of monthly salary, in the decreasing order, depending on quantity of children, i.e. from 36 somoni and lower, and are paid lumpsum). Children's preschool and school institutions are functioning badly. Practically in many of kindergartens there are no groups of a day-nursery age, allowing to work to mothers having juvenile children. A meal, a salary of tutors, nurses in similar institutions in the majority are formed of earnings paid by parents within the framework of a monthly license fee which in turn averages from 15 up to 30 somoni.
Other side of similar marriages is that at divorce all questions of dividing of a property of both spouses do not fall under action of the Family Code of the RT but under norms of civil law. In a result, women after divorce usually remain with a minimum quantity of property, basically without habitation (since on custom the woman lives in the house of the spouse or his parents) and with children on hands. Proceeding from this, basically in countryside such woman with juvenile children usually at all are not acceptable in the native parental house, because of heavy financial conditions. And as consequence, women and men in a marriage, in a heavy situation can finish a life by suicide.
So, as a result of the carried out analysis of suicides on Sughd area of the RT in 2002[36] has shown, that 237 cases of a suicide, from them only in Kanibadam city have been fixed - 36 cases. The reasons which have entailed such extreme measures were: family conflicts - 46 cases; mental diseases (including depression) - 34 cases; intolerable conditions of a life - 24 cases; alcoholism - 24 cases; long, heavy, painful illnesses - 16 cases; the ruthless relation to victims, humiliation, violence - 8 cases; on ground of jealousy - 5 cases; love relations - 4 cases; loss of relatives - 4 cases; fear for punishment for committed crime - 5 cases.
Research had been analyzed 36 registered cases of a suicide in Kanibadam city. A percentage of a gender parity - 50 % on 50 %.
From them city dwellers were 21 persons, rural - 15 persons. The age level among women has made: till 20 years - 7 cases; till 30 years - 5 cases; till 40 years - 6 cases. Among men has made: till 20 years - 1 case; till 30 years - 6; till 40 years - 5; till 50 years - 3; above 50-ти years - 3 cases. From them from alcoholism have been 4 cases.

[35] In January 2004 on accusation of polygamy, participation of activity of the armed groupings and illegal crossing of border for 16 years has been sentenced head deputy of the opposition Islamic Renaissance Party Mr. Shamsuddin Shamsuddinov. http://www.centrasia.ru/news.php4?st=1113374640
[36] Analyze of suicide for 2002 carried out by NGO of the Sughd area.

On agonal notes the reasons diverges in the following: poverty and family conflicts - 10 cases; violence, humiliation, the severe relation - 9; mental diseases (including depression) - 5; long heavy diseases - 4; on ground of jealousy and love intrigues - 3; intolerable conditions of a life, absence of habitation - 2; without the indication of the reasons - 3 cases.
Also questioning of the population in Kanibadam city was spent in parallel of that research (in polling took part 107 person: 86 women and 21 men). On a question « have you ever been reflected on a suicide? » 18 persons (16, 8 %) have answered positively, under the following circumstances: financial difficulties, desperate situations, often conflicts in family.
It is necessary to note the fact that by results of analysis of a situation on suicides the operative brigade under decision of the Khukumats(local municipality) of the Sughd area and Kanibadam cityof area and the city of Kanibadam has been created. The doctor - psychiatrist, workers of Office of Public Prosecutor, and committees on affairs of women, families and youth entered into a brigade. The purposes of the brigade were carrying out of meetings with the population about the reasons and ways of prevention of similar negative practice of suicides. This brigade worked on a gratuitous basis. For today because of a heavy financial situation activity of the brigade is temporarily suspended.
Particularly, the practice of a suicide on Sughd area on present time, takes place to be, though growth of quantity of suicides is not fixed. But, guards the fact that the quantity of suicides grows among of teenagers and women[37].

5. On prosperity of polygamy every year appreciable influence renders the religious factor. For years of finding of independence thousands new mosques in all regions, areas of the country have been constructed and the huge quantity of new attendants of a cult (mulla, pupils of Islamic institutes, medresse and other) has accordingly appeared, the new social group of people has appeared: “Hoji” (persons made pilgrimage to Mecca). From 1992 up to 2004 annually to Hadj (pilgrimage) left only on the official data[38] about 5 thousand persons (for 13 years of independence almost 65 thousand person). If to take into account that on the average the Tajik family will consist from 5 persons so under their influence on relatives and other people consists the significant part of the population of the Republic who will also adhere into a life a various levels of Canons of an Islam and laws of Sheriyat allowing having up to 4 wives.
Besides, in particular negligent attitude to execution of official duties of the civil servants responsibilities for delivery of passports in which marks about previously concluded marriage, divorce and about presence of children are not put, also promotes increase in polygamy.

[37] From private meetings with NGO’s representatives of the Sughd area.
[38] Data of the State Statistic Committee.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

The legal status of minors in the Republic of Tajikistan in general is fixed in a number of legislative acts. The Art. 34 of the Constitution guarantees « special protection and patronization of the state » for mother and to the child. More detailed regulation of protection of the rights of the child can be tracked in the family, criminal, civil legislation.
Originally, it is necessary to note that, unfortunately none in one of the mentioned above acts is not given the full, detailed and precise definition of the child as independent subject with the certain legal status. Narrow definitions of a legal status of the minor can be tracked only in separate norms of the law.
According to the Art. 57 of the Family Code of the RT « the child has the right to protection of the rights and legitimate interests ». In particular, also within the framework of this article the right of the independent application to a court on their own from the age of 14 years is regulated. However, legislatively the mechanism of the application of the child to administrative and judicial bodies is not established yet. Meanwhile, the absence of this mechanism hampers realization and protection of the rights of the minor, when he does not have lawful representatives (parents, foster parents, trustees, guardians) or at the conflict with them.
Concerning to the general protection of the rights of the child in administrative order, in the Republic of Tajikistan is stipulated activity of Bodies of trusteeship and the guardianship regulating theirs activity within the framework of Regulation of mentioned above bodies. The bodies functions within the framework of the activity of local authorities (Khukumats).
Other variant of effective protection of minors, and also the measure for prevention of offences on the part of minors, struggle against homeless children are the Commissions on affairs of minors. However, at present time activity of the Commissions is inefficient. The principal cause of not enough efficiency is a scanty wages of employees and accordingly shortage of the qualified personnel able and wishing to work with so-called difficult teenagers.

Speaking about discrimination concerning children it is necessary to notice, that position of children in the RT essentially depends on many factors, such as: quantities of children in family; from cultural and an educational level of parents and family in which he was born as a whole; from a degree of adherence of religion; from territorial position of place of residing (rural, city, mountain, etc.
Rather fast growth of a population and at the same time weak rates of economic development are increase a parameter of demographic loading. So, in 1989 for 100 persons of able-bodied age were 175 persons of invalid age, and in 1998 - 184 persons. Residing of the basic part of the population below the breadline does not allow having a good meal, clothes, footwear, and habitation, a life, to get necessary medicines and to watch over the health. Major factors which have caused the present situation, have been connected with the civil war, deterioration of conditions of a life of the population, establishing of market relations, partial infringement of a gender-age structure of the population, easing of social protection of large families, change of national structure of the population and reduction of a share of that part which has been focused on small families, more active inclusion of the population in planning family.
In countryside the level of birth rate has considerably decreased, but, in comparison with urbanized district, it is higher. Probably, this is because of a high economic role of children in family, strengthening of industrial - economic function of the family, developed stereotypes of thinking, working conditions and a life[39].

[39] The Conception of the state demographic policy of the RT for 2003-2015 years

The overwhelming part of citizens of the RT lives below the breadline, this part of the population makes 64 % [40]. The monthly average wages of one worker by August, 2004 have nominally made 58.11 somoni, and the size of a consumer's basket on actual consumption has made 32.8 somoni (at rational norm of a feed it would make 74.84 somoni)[41]. Children younger than 18 years make about 49 % of the population, thus middle age makes 22.9 years [42]. The high rate of unemployment has increased from 24 % up to 64 % from 1992 till 2000 (in 2004 officially registered of unemployed was only 42.2 thousands persons) has affected to attendance at schools [43]. Many children have been compelled (including under the insisting of parents) to begin work, as washermen of motor vehicles, porters, street sellers, etc.
Having-many-children in conditions of a low standard of living of families does not promotes for high-grade education of children. Many children with the purpose of rendering assistance to the parents do not attend school or attend formally, being engaged in rendering of services to the population. Among these children is observed a chronic under-eating that is the reason of deterioration of their health; the number of juvenile criminals grows. In the certain measure it is formed insufficiently high-grade generation, spiritually undeveloped, not enough educated and barely qualified, not enough useful for work in modern hi-tech manufactures.
However it is necessary to note, that there is a category of families where parents can give all what children from poor families are deprived. But this category of the population is not significant to a quantitative attribute.

In the Republic of Tajikistan are exists: 8 Child's houses which contain 643 children; nurseries - preschool institutions - 423 children; 75 boarding schools where 11867 children contain. There are 11 units of the special boarding schools for mentally retarded with containing of 1722 children[44]. In all this establishments there are located children, trusteeship and guardianship of which is carries out the state. Position of this category of children has no significant difference with children from families taking place below the breadline if it is not worse.
So, from the interview with the director of Children's home № 1 of Dushanbe it has been found out, that per day for the child it is fixed about 1 somoni and 34 diram (accordingly 0,44 $). The age group of children changes from a birth up to 4 years. Children contains in the several groups, the mixed age, in quantity from 8 up to 12 persons. On each group is fixed one nurse and the tutor. Because of shortage of the personnel, children do not receive due personal attention and are limited in dialogue with adults - tutors, because of big engaged of the mentioned adults.
Children with heavy physical diseases and healthy children are in one building. The health service of fallen ill children remains insufficient.
Many of healthy children as it have been found out, have parents and are not in this case « refused children ». Parents of such children, occasionally appear for "reminder" of their rights to children, but thus do not accept direct participation in education. They continue to be considered as lawful parents. Even taking into account that in the Republic exist a lot of people wishing to take children, legislative procedures in this case are a serious obstacle. So, according to the Art. 130 of the Family Code « the consent of parents to adoption is not required in case if the specified parents do not live together with the child more then 6 months and evade from his education and the maintenance». However, taking into account rare "occurrences" of the parents, this mechanism goes not for the benefit of the child. Thus children continue to remain on care and the maintenance of the Child's house during the long period of time without an opportunity of residing and education in normal high-grade family. Also it is necessary to note, that

[40] The updated report according to a level of poverty in Tajikistan. The World Bank.
[41] Social and economic position of the RT for January - September, 2004.
[42] Public monitoring of 2002. The research center of legality of UNICEF.
[43] From 1989 till 2000 there was a reduction on 9 % of registration at schools. In the same place.
[44] Social and economic development of the RT for 2003

legislation of the RT, particularly in the Art. 130 of the Family Code provides: « the Consent to adoption of trustees, heads of institutions in which there are children who have stayed without care of parents ». According to item 1 of this article « for adoption of children who are staying without care of parents and taking place in corresponding educational, medical institutions, establishments of social protection of the population and other similar establishments is necessary the written approval of the head of that establishment ". However realizations of such right in judiciary practice it has not been fixed[45].

2. Every child shall be registered immediately after birth and shall have a name.

The national legislation fixes regulations about that the application for a birth of the child in the registry office should be made not later than in a month from birthday of the child. At delivery of the certificate on a birth official registration of a birth of the child is made: the surname, a name, a patronymic of the child is underlined, record about parents is brought. Refusal in registration is lawful in a case of absence of the medical information certifying a birth. Taking into account that many of pregnant women prefer to give birth in theirs houses, it is possible to present, what quantity of children in general remains without the certificate.

So, according to made research[46] almost the half of the newborns in Tajikistan appears exactly in home conditions, not always acceptable to the sanitation requirements. The main reason of such birth in most cases are lack of money sources for birth, for purchasing of necessary bed-clothes, sheets for newborn, transport charges, medicines during birth and informal payment to doctors (about 50-60 US dollars). Also from all countries of the Central Asia in Tajikistan there is high a level of mother's and infantile death rate[47].

Owing to the specified reasons, the child who is not having the certificate on a birth is deprived of all state social guarantees of realization and protection of the rights. The child is not registered in children's polyclinics, is deprived process of vaccination which plays to the further development of a healthy genofund (first vaccination from tuberculosis makes in the first day of a birth, extremely in maternity hospitals), reception in children's preschool and school institutions also arises at presence of certificates.

However it is necessary to note, that the term of registration has no essential, practical value, as the Law does not fixed time restrictions on the state registration of a birth of children and does not provide legal sanctions for delayed submission by parents of the application for a birth of the child (except of penal sanctions on excess of a monthly limit of a time which has been released on registration of the newborn child), the submitted application for births of the child over a fixed date cannot form the ground for refusal of the state registration of a birth.

In cases, when the application for registration a birth of the child is sent with the passing of the fixed monthly term, but up to age of the child of one year of a birth, registration will occurs in regular order.

The state registration of a birth of the child of one year and over is made at presence of the medical inquiry on a birth of the established form, on the basis of the decision of court on a discovering of the fact of a birth or a medical board discovered an age of the child.

For 2003 in territory of the RT it has been registered 118361 newborn children, from them with the missed term (over one year of age) 55720 children. In 2004 122920 children about one year has been registered, and for age over than one year - 53442 children[48].

One of the reasons of delayed registration of newborn children is a low legal literacy of parents. And also because of a heavy financial position of family (even payment of the minimal sum, means restriction of the family in an additional piece of bread); a problem of paternity proof (since the part of newborns is born outside of a marriage or from second, third, etc. wives).

---

[45] From the private dialogues with the judges of the courts of a common jurisdiction.

[46] "Practically the half of all newborns are birthing at homes» article of "Deutsche welle " http://avesta.tj./articles/6/4869/html

[47] See in the same place

[48] Data of the State Statistic Committee.

Other aspect of registration of children is a registration of newborns in a place of a registration of parents of a child (residency). At the moment, in Area of Republican Submission named after Rudaki, in gardening cooperative societies, lives the uncertain quantity of internal migrants (internally displaced persons). During civil war they have been compelled to leave the dwellings and to stop on constant residing at one of the private country settlements (summer residency). Summer residences have been got by them from individual citizens without registration of the related documents legalizing their private property (there is no report of assembly of members of cooperative society, there are no membership cards, there is no payment of a membership dues). In this connection, many citizens living in this cooperative society have no right on registration of a place residency on the address of actual residing. And without a registration on a place residency the registry offices do not register of newborn children of citizens living in this settlement.

ARTICLE 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his/her country.

1. Right to vote.

Electoral legislation of the Republic of Tajikistan provides for the right to vote for all the citizens of the Republic of Tajikistan from 18 years old without distinction based on ethnicity, race, sex, language, belief, political position, social status, education or property. Citizens/voters participate in the elections on an equal basis. All the citizens of the Republic of Tajikistan of 18 years old or older by the elections day, residing permanently or temporarily on the territory of an electoral precinct and having the right to vote shall be included in the voters' lists.

Persons who are recognized as legally incapable by the court are deprived of the right to vote as are convicted prisoners The organization of voting process in the closed institutions such as isolators of temporary detention (IVS) of the Ministry of Interior, pre-trial detention isolators (CIZO) and psychiatric hospitals is not regulated by the legislation, so there is a lack of guarantees for media and independent observers' access to such institutions on the Election Day.

Although the legislation establishes that the precinct electoral commissions shall inform the voters about the location of polling stations by sending invitations, not every voter receives such an invitation. For instance, such situation occurred during the last parliamentary elections of 2005. The lack of such invitations and information in general is one of the factors that impeded the realization by citizens of their right to vote. Numerous voters who did not receive an invitation (as they were used to for years as it was always a normal practice in Tajikistan) did not know whether they should go and vote, where should they go, and whether they have a right to vote without having such invitation in hand. Such situations also lead to other violations, for example, without an invitation, a person could go to a different polling station (not where he/she is on the list) and vote there. The cases are known where persons voted in a number of different polling stations following the "advices" of the members of electoral commissions

Moreover, the legislation lacks any provisions for informing the voting public in the event that a candidate withdraws or is removed from the ballot after the voting ballots are already printed with his/her name. The Central Commission on the Elections and Referendums (CCER) gave indications that the members of the precinct electoral commissions shall strike out with a pen the name of such candidate from every voting ballot. Such regulation was misused, and cases are known where voters got ballots where not only the names of dismissed candidate were crossed out but also the names of some other candidates.

During the parliamentary elections of 2005, the voting ballots were printed in Russian, Tajik and Uzbek languages. Nevertheless, on Election Day numerous polling stations in

Dushanbe (where the most Russian speakers live) had only Tajik-language ballots available, and in some remote areas of the country, there were not enough of Tajik-language ballots.

The legislation lacks clarification of the procedure of mobile voting, voting outside of the country, and voting in the armed forces. The Central Commission on Elections and Referendums adopted a regulation prohibiting domestic and international observers from being present at the polling stations on military bases.

2. Right to be elected.

The Constitution and constitutional laws on elections regulate the electoral process of the Republic of Tajikistan. The Law on Elections to the Madzhlisi Oli (Parliament) of the Republic of Tajikistan was adopted in 1999, and amended in June 2004. Some amendments were positive, but in many instances the political situation of Tajikistan was not taken into account by the legislators. For instances, the law does not provide the participation of domestic, non-partisan observers; the complaint procedures have numerous shortcomings, and the most important is that additional requirements for the registration of candidates were imposed. The election pledge is too high for local standards (800 US dollars in the country where a minimum monthly salary is 4 US dollars). Such election pledges prevented numerous potential candidates from running. Another obstacle is related to the requirement for candidates to have higher education (university degree) despite the fact that the Constitution guarantees the "equal rights of every person without distinction based on race, color, education…"

The electoral legislation established an appeal procedure against the decisions of the electoral commissions; appeals can be submitted to an upper-level electoral commission or to a court.

CCER adopts resolutions on received complaints. Nevertheless, the law fails to oblige the CCER to adopt formal decision on every complaint received. Thus, according to the data of the CCER, only 3 complaints out of 63 received by the CCER were satisfied, and only on two of them were the resolutions adopted. The reply to other complaints was given in the form of a letter from the president of the CCER. The Supreme Court refused to consider appeals against the decisions of the CCER that were given in the form of a letter. The Court ruled that it could consider complaints only against the official decisions of the CCER presented in the form of resolutions. Thus, a great number of plaintiffs were deprived of a possibility to appeal to the court against CCER decisions.

For instance, Ms F. V. was registered by the CCER as a candidate in the party list of the Social-Democratic Party of Tajikistan. The District Electoral Commission refused to register her as a candidate of the relevant single-mandate district because of some inaccuracies in her financial declaration. She appealed to the CCER against the registration refusal but got the answer in a form of a letter. The Supreme Court refused to consider he appeal on the above-mentioned grounds. Thus, V. could not register as a candidate and could not even appeal to the court against this decision.

The legislation fails to regulate with clarity the limitations of time for complaints to be considered. Article 20 of the law on the elections to the Madzhlisi Oli provides for complaints to be considered within 3 days but fails to specify if such limitation is imposed on the courts or on the electoral commissions or on both. This results in an arbitrary interpretation of the law. Thus, the Supreme Court and the CCER decided that such limitation of time pertains to the courts only. And the CCER while considering complaints uses the general limitations established by a law on the Applications of Citizens – one month. Such delay is unacceptable for the candidates; they need consideration of their complaints to be held immediately (and before the Election Day.)

3. Political persecution.

The Election Law forbids a person suspected of committing a grave or an extremely grave crime to run as a candidate. This norm clearly violates the universally recognized principle of the presumption of innocence. Two well-known opposition candidates: Makhmadruzi Iskandarov (arrested in Moscow) and Sulton Kuvvatov (head of unregistered political party "Tarakkiet") were removed from the electoral process on these grounds. Also some leaders of the opposition parties were arrested in 2004 and were held in detention. Among them, a deputy chairman of "Tarakkiet" and two active members of the Party of Islamic Renaissance of Tajikistan. The Prosecutor General officially declared that their criminal cases were not related to their political activity, nevertheless, the fact that the criminal investigations on the opposition candidates started some months ahead the elections (for instance, the criminal case on Iskandarov started on November 11, 2004) raises doubts that it is a way to prevent some possible candidates from running.

The Ministry of Justice during the last three years refused to register the Party of Development of Tajikistan ("Tarakkiet".) The last refusal was related to allegedly falsified signatures of party members. Sulton Kuvvatov, the party chairman is under criminal investigation on charges of offending honor and dignity of the President of Tajikistan. The Ministry of the National Security of Tajikistan initiated this criminal case in the end of August 2004. Beforehand, a search was conducted of the premises of Tarakkiet. According to Kuvvatov, the charges against him include not only offense to dignity and honor of the President, but also using the media for incitement to extremist's actions and to ethnic hatred. The fact that the Ministry of National Security investigated the case illustrates its political character.

ARTICLE 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

According to the Art. 17 of the RT Constitution « all are equal before law and a court of law». Also "the State shall guarantee rights and freedoms of everyone irrespective of his nationality, race, sex, language, creed (religion), political convictions, education, social and a property status. Men and women are equal in rights".
The provisions of the constitutional bases of equality of the rights and freedoms are reproduced in several legislative acts: the Criminal code (Art. 5 Principle of equality before the law), the Criminal - Procedure Code (Art. 9 Realization of justice on the basis of equality of citizens before the law and the court), the Family Code (the item 5 of the Art. 1 Are forbidden any forms of restriction of the rights of citizens in coming into a marriage and in family relations on the basis of a social, racial, national, language or religious belonging), the Labour Code (Art. 7 Prohibition of discrimination in labour relations), the Law « About education » in Art. 6 provides « the states guarantees of the rights of citizens on education », the Civil-Procedure Code (Art. 6 Realization of justice only by court and on the basis of equality of citizens before the law and the court), and also in other legislative acts.
However it is necessary to note and that fact, that in a number of the important legislative acts, particularly the Civil Code, the Law « About protection of the rights of consumers », the Law « About public health care » does not contains regulations on equality and on prohibition of discrimination.

As a whole the tendency of inclusion of a principle of equality and freedoms, but not a ban of discrimination as a whole is looked through the legislation of the Republic of Tajikistan, and it is necessary to note that fact, that the concept of discrimination is not given in one of the act, including Constitution of the RT. The constitution of the country is only the guarantor of equal application of the rights and freedoms, without a unequivocal ban of discrimination, as any encroachment on equality of the rights and freedoms. I.e. even the Constitution does not give exact definition of discrimination, and the legislation as a whole does not give also uniform concept of terms which could separate « restriction of the rights », « the state guarantees ». So now we can say that the term "discrimination" does not exists (with clear definition), and there is no also a uniform concept among practicing lawyers, legislators (lawmakers), law enforcement authorities.
In Tajikistan, the most legal norms of the national legislation concerning to realization of equality of the rights are material norms and procedural guarantees against discrimination obviously do not suffice. The special antidiscrimination legislation does not exist. Its development by a legislature is not provided in view of new elections to Parliament. It is necessary to note, that there are no special programs, except for the State program « the Basic directions of the State policy on maintenance of the equal rights and opportunities of men and women in the Republic of Tajikistan for 2001-2010 years», authorized by the RT Governmental order № 391 from August, 8, 2001. Realization of this program also moves ahead slowly though half of released term on realization already coming to the end. There are some criminal, judicial and administrative measures for prevention of discrimination (more to a sexual attribute, rather than as a whole), but they are not effective and poorly applicable.
According to the item 1 of the Art. 143 « Infringement of equality of citizens » of the Criminal code of the Republic of Tajikistan: « Direct either indirect infringement or restriction of the rights and freedoms of the human being and the citizen depending on a sex, race, nationality,

language, a social origin, personal, property status or official position, a place of residence, the attitude towards religion, beliefs, a belonging to political parties, the public associations, harmed to the rights and legitimate interests of the citizen, is punished by the penalty in size from two hundred up to five hundred the minimal sizes of wages or imprisonment within two years. Item 2 of the same article with application of violence or threat of its application or with use of the service position, - are punished by imprisonment for the term of from two till five years with deprivation of the right to occupy the certain positions or to be engaged in the certain activity for the term of till three years or without those.

This article is not a private charge article; therefore criminal prosecutions may be initiated only by the public prosecutor or by law-enforcement bodies. It defines a crime especially in material, but not formal sense. Therefore the violator may be brought to criminal responsibility only if real harm has been done to the victim; an instruction to carry out discrimination or incitement to discrimination is not punishable if they are not public.

There is no any statistics of the Ministry of Internal Affairs on application of this article, as on trials[49]

It is necessary to note the Law of the RT « About public service ». So the Art. 10 of this Law provide « equal access of citizens to public service » on replacement of a vacant post. Also item 10 of the Art. 22 provide restrictions of the right on « display of burrocratism, regionalisms, bias or favour... ». However in practice constantly displays discriminative approaches to selection of the staff. So, everywhere, at all levels of the government the regional, clan, party approach usually applied. For example, only in one of divisions of the Department of the railway, many employees compelled to enter into leading party, under threat of dismissal and employment of new employees passed also at reception of the consent about the subsequent the entering into leading party[50], that also is a direct infringement of « equality of opportunities in the field of work » of the Art. 7 of the Labour code of the RT.

[49] From the personnel interview with the employee of the Ministry of Interior of the RT
[50] From the personnel interview with the employee of the Department of Tajik rail-way

ARTICLE 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

As a whole, in the legislation of the Republic of Tajikistan, from the Constitution up to other legislative acts, the uniform approach for respecting of the rights of all nations and nationalities living on the territory of the Republic including the right on using the native language is looked through. It is necessary to note that in Tajikistan the question of the language rights for national minorities has got the large value. For the majority of minorities language also, and may be more, than any other attribute of self-definition (such as common religion or a history), serves as a measure of a unification of group. Use and preservation of culture of minority turns through the freedom to pass ideas, customs and other attributes of culture on the source language of minority. Language rights of national minorities in Tajikistan require more steadfast attention on the part of the state.

In the national legislation there are no the direct regulations admitting discrimination or restriction on the basis of a nationality or race. (See detailed in the Art. 26). However, the remedial mechanism of realization of the rights of the ethnic minorities living in the territory of the Republic is not developed yet. Established constitutional's principle of the equal manipulation with representatives of all nationalities does not comes to equal opportunities of all ethnic groups, because of the limited opportunities of using of the native language in places of compact residing, weak possession and some times ignorance of a state language. Many of the specified reasons lay down national minorities in unequal conditions in comparison with the basic nation. Therefore, for creation of equal conditions and opportunities on realization of the rights and freedoms proclaimed in the national legislation, creation of special measures for living on the territory of the republic of national minorities and ethnic groups is extremely necessary.

As a result of the carried out research in places of compact residing of the Turkmens the facts of the limited opportunity of receiving of education on the native language[51], contrary to the Art. 21 of the RT Law «On language» have been revealed. This restriction is connected to shortage and absence of a teaching material on the native language. Absence of a teaching material in Turkmen language is connected with a shortage of money (luck of resources) for reprinting at the Ministry of Education of the RT. In 1994 in area Dzhilikulskiy district had been functioned 12 schools with Turkmen language of education, in 2003 - only 7 schools. In September, 2004 in the directive order of the Ministry of Education RT 2 schools have been redirected to the Tajik language of education and process of redirection of other schools on a state language of education is starting. The same situation coming and with some other minorities (Uzbeks)[52].

Because of small number of the population of national minorities in RT, their many representatives simply have no opportunity to accept active participation in a political life of the country. Constitutional Law of the RT « About elections to Majlisi Oli of the RT » in Art. 3 "Principles of participation of citizens in elections" directly specifies that « elections in Majlisi Namoyandagon are goes on the basis of the general, equal and direct suffrage at ballot at the mixed election system in which any quotas are not provided". I.e. for persons which concerns to national minorities. Also « Elections of members in Majlisi Milli are goes on the basis of indirect suffrages at ballot, the one fourth members are appointed by President of the RT ». I.e. there is

[51] From researches on observance of the rights of Turkmen minorities in the RT, carried out in Turkmen community of Dzhilikulskiy district of Khatlon area.
[52] See full text of the recommendations of UN CRD

only an opportunity of employment of a deputy armchair only by directive appointment. In practice, in view of the new elections, this opportunity remains under doubt.

RECOMMENDATIONS

The authors of this report developed the following recommendations with regard to the respect of the norms of the International Covenant on Civil and Political Rights by the Republic of Tajikistan. The recommendations are divided into blocks dealing with different articles of the ICCPR.

ARTICLE 2

Introduce amendments to the procedural legislation of Tajikistan norms:

- That would provide the decisions of the UN Human Rights Committee with relevance in law during the consideration of criminal, civil and administrative cases in the courts of the Republic of Tajikistan;
- That would provide for the mechanisms of executing the decisions of the UN Human Rights Committee in the framework of national judicial and law enforcement systems.

Adopt the measures (including the legislative measures) in order to increase the effectiveness of legal remedies. Thus, such measures shall be aimed at increasing access to national legal remedies and to the mechanisms of execution of the decisions on Human Rights that are adopted on both national and international levels.

ARTICLE 7

Criminalize torture by introducing an article to the Criminal Code of the Republic of Tajikistan. Ensure the compliance of the definition of "torture" in national law to the definition given in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Transfer the duty of investigating torture allegations to prosecutors.

Develop and adopt instructions for prosecutors on investigating complaints of torture and cruel and degrading treatment. Such instructions shall comply with the Principles of Effective Investigation and Documenting of Torture and other Cruel and Degrading Treatment, adopted by the UN General Assembly. The instructions shall include the list of mandatory investigative actions and their time limits.

Develop and adopt the National Plan of Action for Protection of the Victims of Torture and Cruel and Degrading Treatment that would ensure the protection of both victims and witnesses from the pressure and persecution related to complaining or bearing testimonies.

Develop and adopt the National Plan of Action for Rehabilitation of the Victims of Torture and Cruel and Degrading Treatment.

Place the information leaflets and posters in every room of every police department and any place of pre-trial detention. Such informational materials shall contain information on the rights of suspects, accused and arrested persons, including the right to present complaints in cases where torture or cruel and degrading treatment was used.

ARTICLE 8

To implement target actions on protection and rehabilitation of victims trafficking

To take effective steps on prevention of involving under age children to forced labor.

To raise control against involvement of under age children and students to forced labor.

ARTICLE 9

Abolish the currently widespread practice of detention without lawful grounds. In particular, law-enforcement bodies shall adopt the practice of executing an arrest record immediately after de-facto arrest. Ensure the measures of control of such practices.Change completely the concept of applying such exceptional measures of restriction as pre-trial detention. This measure shall be used only in exceptional cases and cease to be a general rule. The grounds for applying this exceptional measure shall be documented and be strictly in accordance with the law. Adopt the measures for applying other measures of restriction such as bails, recognizance not to leave, house arrest, and personal guarantees. Also develop a practice of restraining from applying any measure of restriction that is not necessary.

ARTICLE 14

Ensure real equality of arms during criminal proceedings through the following amendments to the Criminal Procedure Code:

- Ensure that the legislation provides for immediate access of a lawyer to his/her client kept in pre-trial detention (abolishing existing requirement of getting permission from an investigator or a judge;)
- Impose legal obligations on the investigation and the court to accept evidence that is presented by the defense if such evidence is obtained in accordance with the law;
- Ensure the access of the party of defense to all evidence from the beginning of the criminal proceedings;
- Ensure that a suspect, accused or defendant is in person brought before the competent bodies while his complaints are being considered at any stage of the criminal proceedings.

Change the schedule of the work of court secretaries to ensure the access of interested parties to the necessary documents without undue delays.

In order to ensure the principle to be tried in public hearing, it is necessary to narrow and concretize the norms of the national legislation dealing with the huit-clos court hearings. Existing legislation creates conditions for abuse of such possibilities.

Abolish the institution of military prosecutors and transfer their functions to civil prosecutors. Abolish military courts and give their competences to other courts of general jurisdiction.

Improve the system of registration of the court hearings (court minutes) using modern technology. For example, all court hearings shall be audio taped, copied on paper and then added to the case file (both audio tape and paper transcript.)

ARTICLE 17

Adopt amendments to the Criminal Procedure Code and Penal Code and entrust the courts with giving sanctions for house search, perlustration and listening of telephones. Ensure the secrecy of correspondence in all the institutions unless otherwise ordered by the court. Ensure that letters to lawyers are not opened in any institutions.

The methodology of conducting investigations shall be improved, as well as the level of professionalism, the responsibility of the law-enforcement officers, and their knowledge of human rights through, inter alia training programs.

Ensure that the officials dealing with issues of family, guardianship and trusteeship abstain from arbitrary interference into the private lives of people; ensure the transparency of their work and their responsibility, as well as develop accessible and functioning mechanisms for complaint against such interference.

General awareness on the right to family and private life shall be raised. There is a need for conducting awareness raising campaigns with local communities (including local respected persons) in order to combat the negative influences of certain traditions on the realization of this right. Pay attention to develop informational materials on state (Tajik) language.

Bring the activity of local administrations (khukumats) into compliance with legislation in order to limit the violations while deciding on the issues of interference into private life with regard to housing rights.

ARTICLE 18

Ensure the respect of the legislation of the Republic of Tajikistan by the local Khukumats (administrations) while resolving the issues of registration and functioning of religious organizations. Ensure the transparency of the activities of the local Khukumats in making the decisions of the registration and monitoring of activity of religious organizations. Ensure that the opportunity for the interference of local authorities into the activities of religious organizations is strictly limited by the law and can be undertaken only if necessary in democratic society.

Ensure the respect of the legislation the Republic of Tajikistan and of the standards of the freedom to exercise one's religion in the activities and decision-making of the religious bodies (Councils of Ulems) of Tajikistan.

Establish effective and accessible legal remedies in order to protect the persons from interference in their choice of religion, from coercion to join/keep a specific religion and in other issues related to the freedom of belief.

Ensure by the legislation the equality of religious organizations of different confessions and ensure that the requirements related to their functioning on the territory of Tajikistan are the same.

Conduct the awareness raising campaigns in local communities in order to abolish the discriminatory approaches towards different religions and towards people changing their religious views/beliefs.

Ensure the respect for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions, including equal opportunities for conducting religious education, and open the religious educational establishments for both Islamic and non-Islamic confessions.

Specify in the legislation the control functions of the State body on the Affaires of Religion and Religious organizations; define the scope of its jurisdiction, limitations, principles of work, and

appeal procedures. The respect for the freedom to manifest one's religion or belief shall be the primary principle of its activity, and the possibility of imposing any restrictions shall not exceed those provided for by Article 18 and shall be subject to judicial control.

ARTICLE 19

In order to develop freedom of expression and reinforce the democratic process, it is important to conduct regular monitoring of the situation of the freedom of expression, the situation with independent media, develop the legal skills required for the protection of the professional rights of journalists and regulate the media-disputes in the legal field. The legal mechanisms regulating media activity and freedom of expression must be improved.

Introduce to the Code of Administrative Offences of the Republic of Tajikistan an article providing for responsibility for the refusal to provide the socially important information;

Decrease the time limit for providing the socially important information from one month to five days;

Exclude from the Criminal Code of the Republic of Tajikistan article 135 (libel) and 137 (public insult of the President or libel in his/her regard);

Introduce the notion of "public figure" to the legislation;

Define the maximum of possible moral damage in article 174 of the Civil Code of Tajikistan;

Adopt a new Regulation on licensing in the sphere of television and radio broadcasting in the shortest term;

Create an independent Council for Licensing of television and radio broadcasting;

Identify one competent body and entrust it with registration and holding the registry of the media.

Simplify the procedure of the registration and licensing of the print and electronic media;

Exclude from Article 9 of the Law "On Press and other Media" the requirements of obtaining the acts for registration from the Ministry of Justice and the Ministry of Culture;

Entrust the local notaries in the places of location of the media with the registration duty;

Ensure that the hearing of the applications for the licenses in the sphere of television and radio broadcasting are held publicly.

ARTICLE 23

To raise efficiency of activity of Service of employment of the population with the purpose of realization of programs in the field of employment.

To realize stage-by-stage indexations and increasing of wages to all category of working citizens according to rates of a raised prices on the basic goods, services and food stuffs.

To increase the size of the monthly grant on a birth of a child to mothers. To develop and improve working system of functioning of children's preschool institutions.

To lift in bodies of the registry offices on a due level propagation and explanatory activity on marriage registration among the population, and also on realization into a life of " the Marriage contract » an articles 40-47 - of the Family Code of the RT, as effective mechanism of protection of mutual interests of spouses.

To develop and realized through the national legislation the order of the conclusion of special agreements within the framework of civil law, in view of the family legislation between the persons, living in a civil marriage, with the purpose of maintenance of equality in property questions.

To develop mechanisms on propagation of healthy lifestyle among the population, to raise knowledge of rural and urban population about value and respect of the person and a life of each individual, and to increase preventive measures on eradication of practice of application of a suicide.

To exclude the Art. 170 of the Criminal Code of the RT with the purpose of prevention of its application as a way of pressure to objectionable people.

ARTICLE 24

Legislatively to determine position of the minor participant of litigation and to provide an opportunity of rendering to him a legal aid on presentation of his interests in courts of all instances.

To develop measures on supporting of families in the field of decrease of economic role of children in family and increases of a level of their health, education, formation and vocational training.

To provide registration of a birth of children irrespective of presence at parents of the documents confirming a registration of a residency.

ARTICLE 25

Oblige the electoral commissions in the regions to ensure that all registered candidates receive equal (from the point of length and day time) free airtime on television.

The electoral commissions shall reinforce their control over the campaigns and actions of the candidates. Register all the violations and abolish “double standards” practices where the same violations are registered for one candidate and ignored for another one. The established by law warning shall be made with regard to every candidate violating the law.

Courts and prosecutors shall increase the effectiveness of the examination of election related cases and complaints. They shall conduct examinations in a timely manner in particular with regard to the appeals on decisions of electoral commissions on de-registering a candidate and removing him/her from the race.

ARTICLE 26

To develop and pass the Law « On elimination of all forms of discrimination » where to give precise definition of terms.

To clear up completely legislation of the RT in conformity with the international standards on anti-discrimination.

ARTICLE 27

To pass the Law on national minorities where to give precise definition of the persons falling under the status of national minorities, living on the territory of the RT.

To provide access to education on the native language in places of compact residing the persons falling under the status of national minorities.

To make changes to the Law « About elections » in item of the prediscretion of quotas places) in the Parliament of the country for representatives of the national minorities living in the territory of the RT