ATTACKS ON JUSTICE – UZBEKISTAN

Highlights

The absence of judicial independence continues to represent a serious menace to state development and to human liberties. The executive controls the initiation and drafting of legislation, exercises scrutiny over the judiciary and dominates local officials through powers of appointment and budgetary control. Prosecutorial bias is used to influence courts and interfere with advocates' work. A March 2003 constitutional amendment formally reduced the powers of the president. On a positive note, the criminal code was amended in late 2003 to reduce the number of articles punishable by death to two.

BACKGROUND

The **Uzbek Parliament** (Supreme Assembly) amended the *Constitution* in **March 2003** to create a second, smaller parliamentary chamber called the "**Oliy Kengash".** Article 89 of the Uzbek Constitution, which had granted the president power to preside over both state and executive functions of government, was also amended to reduce the president's role to that of head of state.

On **27 January 2002** a national referendum was held that extended **President Islam Karimov**'s term in office to December 2007. Parliamentary elections for representatives to the lower chamber of the **Supreme Assembly** were held on **26 December 2004**, creating a bicameral parliament. The **OSCE** mission which observed the elections concluded that they fell significantly short of international standards for democratic elections. Opposition political parties had been denied registration under restrictive registration procedures; the law allows the Ministry of Justice to suspend parties for up to six months without a court order.

Although Uzbekistan's Constitution provides for the separation of powers between the executive, legislative and judicial branches, in practice it is **President Karimov** who holds almost all power: the **judiciary** lacks independence and the **legislature** has little power to shape laws. The modest steps taken to improve the constitutional framework do not amount to significant improvements in democratization. Constitutionally protected human rights are violated with impunity and allegations of torture are widespread. Human rights defenders and opposition political activists are particular targets of abuse. The **UN Special Rapporteur on Torture** visited the country in **2002** and concluded that torture in Uzbekistan's prisons was "institutionalized, systematic and rampant". Uzbekistan still carries out the death penalty.

Around 6,000 political prisoners remain in jail and a crackdown on political and religious dissent was ongoing during the period, particularly after **terrorist attacks** in **March** and **July 2004** in the Tashkent and Bukhara regions. Important government positions in Uzbekistan continue to be traded, sold or distributed on the basis of

family, clan or regional cliques. While censorship was formally abolished by a **May 2002 government decree**, the danger of retaliation from local officials creates an atmosphere of self-censorship as damaging to an independent media as official censorship itself.

JUDICIARY

Judicial independence

Judicial independence is proclaimed in the Constitution and in Uzbekistan's *Law on Courts No. 162-II* of **14 December 2000**, but in practice judges are fully dependent on the executive. Security of tenure is non-existent, and economic pressure and prosecutorial bias are exercised to interfere with their independence and impartiality. On **23 May 2003** the **UN Special Rapporteur on the independence of judges and lawyers** sent a letter to the government requesting a future visit to the country (E/CN.4/2004/60/Add.1, **4 March 2004**).

Uzbek courts are extensions of both the **procurator's** (prosecutor's) offices and local executive authorities. Neither *habeas corpus* nor the equality of arms are guaranteed during the process and the independence of judges remains formal: the **procurator** plays a central role and strongly influences the judge, who rarely hands down independent or impartial rulings. In **June 2002**, the **UN Committee against Torture** reported a heavy reliance on confessions, unacceptable prison conditions and inadequate access to lawyers for detainees. It regarded the judiciary as insufficiently independent, and declared that the procuracy functioned in ways that gave rise to serious doubts about its objectivity. Most judges lack proper professional qualifications: positions are usually bought by bribery. As a rule "professional qualifications" are overruled by "suitability" in the eyes of local executive authorities.

Security of tenure

In **2001**, the **UN Committee on Human Rights** was "gravely concerned about judges' lack of independence contrary to the requirements of article 14, paragraph 1 of the *International Covenant on Civil and Political Rights* (ICCPR). The appointment of judges for a term of five years only, in particular combined with the possibility, provided by law, of taking disciplinary matters against judges because of 'incompetent rulings', exposes them to broad political pressure and endangers their independence and impartiality" (http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/537007e299bf539ec1256a2a004b86cb?Opendocument).

The system remains unchanged today: after five years judges are still subject to re-appointment. Anyone who has rendered decisions contrary to the interests of the government, or whose opinions have been frequently appealed against by the procuracy, will in practice not be re-appointed. Judges who are reliant on the recommendations of their court chairs for re-appointment are less likely to reach decisions independent of those chairs. Upon retirement, the **president of Uzbekistan** automatically becomes a member of the **Constitutional Court**: only he can have life tenure. The removal and discipline of judges was reported in **2002** to lack transparency and to be largely non-objective (http://www.abanet.org/rol/publications/uzbekistan_jri_2002_english.pdf).

Judges in Uzbekistan are underpaid: a lower court judge may be paid between $20 and $30 per month, and higher court judges a bit more, but all of them are less well paid than procurators or the police. Judges of the Constitutional Court are in a better position. Low judicial salaries certainly contribute to the reported problem of judicial corruption. Salaries are unlikely to attract qualified lawyers to the judiciary.

Internal independence
According to articles 38 and 58 of the **2000** ***Law on Courts***, cases are assigned by the president of each court. This practice is often used as a way of rewarding a "loyal" judge with a case where a good bribe may be available. The system leads to widespread corruption. Every six months, a court chair prepares a report for the court above him/her concerning the functioning of judges in his/her court. It is argued that objective criteria are used, such as how quickly the judges work and how often their decisions are reversed on appeal, but the process is neither objective nor transparent.

Interference by the executive
Judges in Uzbekistan are controlled and manipulated by the executive branch. The law itself mandates the participation of the executive branch at the highest levels of judicial decision-making: the **2000** *Law on Courts* provides for the prosecutor general to participate in the plenary sessions of the Supreme Court. Representatives of the President's office dealing with legal and judicial matters attend the plenary meetings of the Constitutional Court, the Supreme Court and the Higher Economic Court to observe the development of instructions to lower courts.

Courts typically follow the lead of the **procuracy** in criminal matters, and not guilty verdicts remain extraordinarily rare. As in the Soviet era, courts do not feel strong enough to counter the will of the state, as embodied in the procuracy. Judges fear they will not be re-appointed to their posts if they acquit. If a court feels that the procuracy has not established the guilt of a defendant, the most likely outcome is that the case is remitted for further investigation. Judges do not act as impartial arbiters in disputes between the state and citizen, but rather enforce the state's will. Often the procurator does not appear in a trial before sentencing, which means that the judge is left to prosecute (and then to decide) a case. At the very least, this runs counter to any separation of powers, and raises serious concerns regarding judicial independence.

Judicial associations
The **Association of Judges of Uzbekistan** reconvened in **September 2002** and formally elected a Ministry of Justice official as chairman, giving rise to concerns regarding the independence of the organization. Although the temporary incumbent was elected by a majority of the association membership in attendance, the proceedings and election were reportedly manipulated to his advantage and were not transparent (http://www.abanet.org/rol/publications/uzbekistan_jri_2002_english.pdf).

Constitutional Court
According to Article 19 of the *Law of the Republic of Uzbekistan on the Constitutional Court, No. 103-I* (**30 August 1995**), this body considers "the constitutionality of acts by the legislative and executive powers". Individuals cannot present cases for consideration to the court, which does not have jurisdiction over questions concerning the constitutionality of regulations issued by state agencies,

including the procuracy. The Constitutional Court has not been an active institution, rendering only ten to fifteen decisions a year, and is reportedly considered a "dead institution" (http://www.abanet.org/rol/publications/uzbekistan_jri_2002_english.pdf)

Despite the fact that article 13 of *the Law of the Republic of Uzbekistan on Procuracy, No. 257-II* of **21 August 2001**, enhanced the Constitutional Court's jurisdiction to enable it to review decisions and instructions by the prosecutor general to ensure they comply with the Constitution, no cases have yet been presented to the court. Citizens have applied for decisions by regional and district-level prosecutors to be reviewed, but the Constitutional Court has so far declined.

Attacks on judges

The judge of the Ferghana Regional Criminal Court, **Abdujalil Alikulov,** was caught in the crossfire of executive pressure, when on **10 April 2003** he acquitted five defendants accused of premeditated murder. During the trial it became known that the criminal case had involved serious legal violations: investigators obtained "confessions" through psychological and physical pressure and used torture, while the actual alleged organizers and executors of the murder remained free and jeopardized the investigation. Immediately after the verdict, the first deputy prosecutor of the Ferghana region, **M. Kurbanov**, filed a protest. The chairman of the Ferghana regional court judge, **B. Islamov**, took the case away from Judge Alikulov and forwarded it to the Ferghana regional criminal court's commission of appeal.

LEGAL PROFESSION

Uzbekistan fails to meet the standards of the *UN Basic Principles on the Role of Lawyers*. Control over licensing, interference with association activities and the unequal treatment of lawyers and procurators (prosecutors) are the main occurrences.

Both in practice and under the law, the *advocatura* is discriminated against and procurators are favoured. According to Article 48 of the *Code of Criminal Procedure*, a lawyer's right to consult in private with his/her client begins only after the first interrogation by investigators. This right is often not explained or is forcibly waived; lawyers' access to their clients is often blocked by police investigators or prosecutors. Lawyers have virtually no rights before investigating authorities, the procuracy and judges. In most cases they are prevented from acting independently while defending their clients, in so far as their role is often reduced to signing documents relating to fabricated charges and to filing appeals to higher judicial bodies.

A practice known as **"pocket lawyers"** – attorneys who are paid by, act in the interests of and are in the "pocket" of investigators – is prevalent. The **1995** *Code of Criminal Procedure* enables police investigators to deny a detainee access to his chosen lawyer and instead to provide him/her with a lawyer who may act in the interest of the police investigator, rather than in the best interests of his/her client. Article 53 provides that a lawyer must receive a written confirmation from the inquiry body before being granted access to a client. This practice often slows down lawyers' access to their clients and provides a pretext for investigators to claim that a chosen lawyer is unavailable. Lawyers may be present during interrogation but may not advise their clients, if the procurator allows the attorney to be present at all. In some

instances, a lawyer may not be able to get a copy of the law whose violation his client is being charged with. The procurator may also block access to a defendant under unknown regulations not made public.

On **21 August 2003** the **Main Investigation Directorate of the Ministry of Interior** concluded a protocol approving a regulation "*on the procedure of enforcing the right to defence of arrestees/detainees, suspects and accused*" with the **Uzbekistan Association of Advocates** (Bar), to create a "duty lawyer" scheme designed to counter the officially-acknowledged problem of legal assistance to detainees being provided by so-called "pocket lawyers". The scheme, in operation over a year, was scheduled to be reviewed by the Ministry of the Interior in conjunction with the Uzbekistan Association of Advocates in November and December **2004**.

While Uzbek law provides for state-funded criminal defence representation, state compensation to *advocatura* lawyers for such cases is at an astonishingly low rate. Moreover, lawyers currently pay almost 70 per cent tax on wages, at a time when indigent criminal defence cases still comprise more that half of their caseload. Since a tax increase in **December 2003**, many lawyers have left the profession because they cannot afford the costs of practising law.

Harassment of lawyers

The *Law on the Legal Profession* (*Advocatura*) of **27 December 1996** establishes the **Ministry of Justice** as the licensing body vested with the authority to grant, suspend or revoke lawyer's licences and to grant or deny registration of lawyer's bureaus, collegiums and firms. In practice, the Ministry of Justice is known to use its licensing power as a tool for harassment.

In **February 2003**, lawyer **Fuat Ruziev** wrote an article criticizing the tax authorities for abuse of power. Shortly thereafter, the **Ministry of Justice** began pressurizing the **Lawyers' Qualification Commission** to revoke his lawyer's licence. In general, licence revocations are regularly threatened as a way of keeping lawyers in line. While licences are not frequently revoked, the mere investigation and recommendation for licence revocation constitutes harassment and can damage a lawyer's reputation.

Sanjar Yakubov, Chairman of the Tashkent City **Collegium of Lawyers**, and **Gulnora Ishankhanova**, Chairperson of the Tashkent City branch of the **Association of Lawyers of Uzbekistan** (AAU), were threatened with licence revocation by **Bahram Salamov**, Chair of the Association of Lawyers of Uzbekistan, after they were accused in **December 2002** of "separatism activities" for failing to attend the Tashkent delegates meeting of a lawyers' congress. Reportedly they were denied access to this congress.

Surkhandarya lawyer **Jalol Rajabovich Halilov** was identified with his client's cause regarding allegations of torture, and Surkhandarya law enforcement officers threatened to plant drugs on him. His licence, already revoked on spurious grounds and later reinstated, is again under threat.

ACCESS TO JUSTICE

In practice, authorities frequently ignore legal protections against pre-trial detention, and there is no judicial supervision of detention such as is provided by *habeas corpus*. Once charges are brought, suspects may be held in pre-trial detention for up to a year. Persons under arrest have no access to a court to challenge the length or validity of their pre-trial detention. Police may hold a suspect without a warrant or just cause for up to three days, after which he/she must then be either released or charged. If a person is declared a suspect, he may be held for an additional three days before being charged. A procurator's order is required for arrests, but not detentions. Although the law provides that detainees and defendants have the right to an advocate this is rarely put into practice.

Torture and the death penalty

According to the **UN Special Rapporteur on Torture**, who conducted a mission to Uzbekistan in late **2002**, torture has been systematic and many confessions obtained through torture and other illegal means have been used as evidence in trials, including those leading to the death penalty and other severe punishments (http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/29d0f1eaf87cf3eac1256ce9005a0170/$FILE/G0310766.pdf)

People are sentenced to death after unfair trials, and courts fail to investigate allegations of torture as judges routinely admit as evidence confessions extracted under torture. Prisoners continue to be executed in secret. At least four death-row prisoners were executed in **2003** while their cases were under consideration before the **UN Human Rights Committee**. In all these cases, complaints had been submitted to the committee alleging serious human rights violations, including torture to force "confessions".

In **August 2003**, the **Uzbek Parliament** amended the *criminal code* to introduce a definition of torture (Article 235) as well as punishment for those who violate the said article. The **Ministry of Internal Affairs** and the **Ministry of Justice** also established internal human rights monitoring mechanisms to incorporate ethics issues into their internal decision-making.

In **December 2003 Parliament** passed a law reducing the number of articles in the Criminal Code specifying offences punishable by death from four to two. The two dropped articles –"genocide" and "initiating or waging an aggressive war" – had not been in use. The *Uzbek criminal code* has been revised on numerous occasions, usually with regard to its provisions on the death penalty. Although the code initially included 13 articles providing for capital punishment, five of these were removed in **1998**, and the remaining eight were further reduced to four in October **2001**. The death penalty now may apply only to crimes of 'premeditated aggravated murder' (Art. 97 part 2) and "terrorism" (Art. 155 part 3). The government also announced a reduction in prison terms and an increase in the number of offences punishable by fines rather than by prison sentences.

Following the visit of the **UN Special Rapporteur on Torture** in late **2002**, the government requested the **National Human Rights Centre** to draft a **National Action Plan to Combat Torture**. **UNDP** provided technical and financial support to the centre, with the involvement of concerned diplomatic missions, local and

international NGOs. The plan was approved by the **Prime Minister** of Uzbekistan in **March 2004**. The government has also formed an **Inter-departmental Working Group**, chaired by the Ministry of Justice, that is to, among other things, monitor and to coordinate the implementation of the action plan.

Other criminal code amendments

In **October 2002**, Uzbekistan abolished the state monopoly on Internet access. Although a new system of Internet regulation is developing swiftly, the new law no longer requires users to access through the centralized state provider.

In **February 2004**, the **Cabinet of Ministers** issued a decree (*No. 056)* requiring "state statistics reporting" on international technical assistance to NGOs and the "monitoring of purposeful use of funding". It also ordered the transfer of all NGO funds received from international donors to the National Bank of Uzbekistan and the Asaka Bank. A further implication of this decree is that NGOs cannot receive funding from donors that are not registered or accredited in Uzbekistan. A **25 May 2004** Presidential Decree (*No. 3434*) requires women's NGOs to apply for re-registration with the government's Women's Committee, which operates in a legally ambiguous position, issuing licences to NGOs that do not endorse the government's policies. Lastly, a **11 June 2004** Regulation (*No. 275*) makes it compulsory for NGOs to obtain official approval for their publications.

Pursuant to the President's instructions, Uzbekistan has embarked on a process of liberalizing criminal penalties. It has removed prison sentences for some less serious violations, limited the grounds for capital punishment and prohibited the confiscation of property from those convicted of crimes. Deprivation of liberty is no longer widely used as a punishment for economic crimes, and thousands of individuals previously convicted of minor offences were released from prison under a presidential pardon.

In **December 2003**, in observance of the 11th anniversary of the Uzbek Constitution, an **amnesty** was announced that was said to have released some 3,300 prisoners from imprisonment. Most female convicts, invalids, persons suffering from serious diseases, men over 55, foreign nationals and persons who were minors at the time of their sentence were eligible for release, with the exception of those convicted of murder, terrorism, drug trafficking or crimes against the Constitution.

LEGAL REFORMS DURING THE PERIOD

May 2002:	Censorship formally abolished by government decree.
October 2002:	State monopoly on Internet access abolished.
March 2003:	Constitution amended to create a second, smaller parliamentary chamber ("Oliy Kengash")
21 August 2003:	Ministry of Interior concluded a Protocol with the Uzbekistan Association of Advocates to create a "duty lawyer" scheme.

August 2003:	*Criminal code* amended by Parliament to introduce a definition of torture.
December 2003:	Offences punishable by death reduced by Parliament from four to two. Death penalty now applies only to crimes of "premeditated aggravated murder" and "terrorism".
February, May and June 2004:	Decrees issued concerning monitoring, funding and control of NGOs' activities within Uzbekistan.