



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Ninety-fifth session  
16 March - 3 April 2009

**VIEWS**

**Communication 1334/2004**

<u>Submitted by:</u>	Mr. Rakhim Mavlonov and Mr. Shansiy Sa'di (represented by counsel, Mr. Morris Lipson and Mr. Peter Noorlander, Article 19)
<u>Alleged victims:</u>	The authors
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	18 November 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 10 December 2004 (not issued in document form)
<u>Date of adoption of Views</u>	19 March 2009

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\* Made public by decision of the Human Rights Committee.

*Subject matter:* Denial of re-registration of a newspaper published in a minority language by the State party's authorities.

*Substantive issues:* Right to freedom of expression; right to impart and receive information in print, restrictions necessary for the protection of national security, restrictions necessary for the protection of public order; right to enjoy minority culture.

*Procedural issues:* None

*Articles of the Covenant:* article 19; article 27.

*Articles of the Optional Protocol:* None

On 19 March 2009, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1334/2004.

[ANNEX]

**ANNEX**

Views of the Human Rights Committee under article 5, paragraph 4, of  
the Optional Protocol to the International Covenant on Civil and Political rights

Ninety-fifth session

concerning

**Communication 1334/2004\*\***

<u>Submitted by:</u>	Mr. Rakhim Mavlonov and Mr. Shansiy Sa'di (represented by counsel, Mr. Morris Lipson and Mr. Peter Noorlander)
<u>Alleged victims:</u>	The authors
<u>State party:</u>	Uzbekistan
<u>Date of communication:</u>	18 November 2004 (initial submission)

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

Meeting on 19 March 2009,

Having concluded its consideration of communication No. 1334/2004, submitted to the  
Human Rights Committee on behalf of Mr. Rakhim Mavlonov and Mr. Shansiy Sa'di under the  
Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the  
communication, and the State party,

Adopts the following:

**Views under article 5, paragraph 4, of the Optional Protocol**

1. The authors of the communication are Mr. Rakhim Mavlonov and Mr. Shansiy Sa'di,  
Uzbek citizens of Tajik origin, dates of birth unspecified, residing in the Samarkand region of

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\*\* The following members of the Committee participated in the examination of the present  
communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine  
Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid,  
Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. José Luis Pérez Sanchez-Cerro,  
Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and  
Ms. Ruth Wedgwood.

An individual opinion co-signed by Committee members Sir Nigel Rodley and Mr. Rafael  
Rivas Posada has been appended to the present Views.

Uzbekistan at the time of submission of the communication.<sup>1</sup> They claim to be victims of violations by Uzbekistan<sup>2</sup> of their rights under article 19 and article 27, read together with article 2, of the International Covenant on Civil and Political Rights. They are represented by counsel, Mr. Morris Lipson and Mr. Peter Noorlander, lawyers employed by the non-governmental organization “Article 19”.

## **Factual background**

### **The case of Mr. Mavlonov**

2.1 Mr. Mavlonov is the editor of the newspaper “Oina” and Mr. Sa’di is a regular reader of the same newspaper. “Oina” was published almost exclusively in the Tajik language, principally for a Tajik audience. It was the only non-governmental Tajik-language publication in the Samarkand region of Uzbekistan. Issues of “Oina” were published bi-weekly, and were distributed to dozens of schools that use Tajik as the language of instruction. Each such school received between 25 and 100 copies. In addition to the schools, “Oina” had approximately 3000 subscribers, and approximately 1000 copies of the newspapers were sold by street vendors.

2.2 Consistent with the goals of its statutes, “Oina” published articles containing educational and other materials for Tajik-language students and young persons, to assist in their education, to promote a spirit of tolerance and a respect for human values, and to assist in their intellectual and cultural development. In addition to publishing reports on events and matters of cultural interest to this readership (including interviews with prominent Tajik personalities), the newspaper published samples of students’ work. It also detailed particular difficulties facing the continued provision of education to Tajik youth in their own language, including shortages of Tajik-language textbooks, low wages for teachers and the forced opening of classes using Uzbek as the language of instruction in some schools where Tajik had previously been the only language of instruction.

2.3 “Oina” was initially registered on 8 November 1999. Its founders were the private firm “Kamol”, the Samarkand City Bogishamal District Administration and Mr. Mavlonov, as an editor. In the spring of 2000, the private firm “Kamol” and the Samarkand City Bogishamal District Administration opted out as “Oina’s” founders. In accordance with the Uzbek Law “On Mass Media” of 26 December 1997<sup>3</sup> and applicable regulations, it was required that the newspaper re-register. On an unspecified date, “Oina” applied for re-registration, with a public entity, the “Kamolot” Foundation’s Samarkand City branch, and “Simo”, a private firm formed

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<sup>1</sup> On 15 November 2006, the counsel informed the Committee that in the period since the communication was submitted Mr. Mavlonov has had to flee Uzbekistan.

<sup>2</sup> The Optional Protocol entered into force for the State party on 28 December 1995.

<sup>3</sup> The relevant part of article 13 of the Law “On Mass Media” reads: ‘The application for registration of the mass media organization should specify its: 1. Founder(s); 2. Name, working language(s), and legal address; 3. Aims and tasks; 4. Supposed readership (viewership, audience); 5. Supposed periodicity of publication or broadcast, volume of the publication, sources of funding, material and technical supply. If the said data change, the mass media is obliged to re-register according to existing procedures. If these changes are not essential, the registration entity could make a decision that it is not necessary to re-register this mass media organization.’

by Mr. Mavlonov, as the newspaper's two founders. The application was approved by the Press Department of the Samarkand Regional Administration, the entity responsible for the registration of applications in the Samarkand region (hereinafter, "Press Department"), and "Oina" was re-registered on 17 August 2000. It resumed publication shortly thereafter. Its circulation was approximately the same as before the re-registration, and the same schools continued to subscribe to and to receive copies of the newspaper.

2.4 The last issue of "Oina" was published on 7 March 2001. On 23 March 2001, the head of the "Kamolot" Foundation wrote a letter to the Press Department informing it that "Kamolot" was opting out. According to the Press Department, this opt-out triggered a duty on "Oina" to apply for re-registration. Accordingly, in a decision dated 28 March 2001, and apparently pursuant to its authority under article 16 of the Law "On Mass Media" and applicable regulations, the Press Department (a) cancelled "Oina's" license to publish, (b) directed an order to all printing shops in the region prohibiting them from printing copies of "Oina", and (c) noted that "Oina" could apply for re-registration and that the Press Department would consider any such submission 'in strict compliance with law'.

2.5 On 29 March 2001, Mr. Mavlonov and the private firm "Simo" submitted a re-registration application.<sup>4</sup> According to Mr. Mavlonov, this application was in conformity with Uzbek law.<sup>5</sup>

2.6 On an unspecified date, Mr. Mavlonov received a document by post entitled "Decision of the meeting of the mass media organs registration commission under the Samarkand regional Administration Press Department" dated 27 April 2001. The commission resolved as follows:

'Due to the fact that the newspaper "Oina" grossly violated article 6 of the Law "On Mass Media" [...]; due to the numerous faults committed as becomes clear from the materials presented, and pursuant to the Law "On Mass Media" and mass media organs registration Regulations and Resolution of the Cabinet of Ministers of 23 May 2000 devoted to the improvement of mass media activity towards enlightenment and national ideology building, it is unsuitable to re-register the newspaper "Oina".'

The newspaper was considered to have published articles inciting inter-ethnic hostility, as well as to have spread the view that Samarkand was a 'city of Tajiks', which allegedly constituted a violation of laws prohibiting calls for changes to the territorial integrity of the country. The decision also stated that the newspaper had published articles suggesting that local officials were 'far from enlightened', which was considered to be insulting.

2.7 No specific published articles were referred to in the decision; however, Mr. Mavlonov considers that the only two articles upon which the commission might have based the above comments are a Tajik writer's interview published in "Oina's" last edition, in which he referred to Samarkand as a 'pearl of Tajik culture', and was critical of the low salaries of Tajik teachers;

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<sup>4</sup> Under paragraph 1.3 of "Oina" statutes, 'the newspaper is not a legal person and operates using its founder's bank account and official seal/stamp'.

<sup>5</sup> Reference is made to article 13 of the Law "On Mass Media" and to paragraph 4 of a Resolution of the Cabinet of Ministers No. 160 "On the procedures of Registration of the Mass Media in the Republic of Uzbekistan" of 15 April 1998 (hereinafter, "Resolution No. 160") and its annex.

another may have been an open letter published on 23 November 2000, addressed to the mayor of Samarkand, which sought an explanation of why insufficient resources had been allocated to fund the purchase of Tajik schoolbooks. It also questioned whether closing down Tajik classes was consistent with the government's policy of encouraging equality and the friendly co-existence of all nationalities. Mr. Mavlonov reviewed all publications prior to their release for compliance with the law.<sup>6</sup> Additionally, each of "Oina's" issues had been subjected to prior censorship by the representative of the Office of the Chief of State Press Committee's State Secrets Inspectorate. The same Office's representative, who had previously approved the publications in question, was in fact one of the members of the commission under the Samarkand regional Administration Press Department that made the decision not to re-register "Oina".

2.8 Mr. Mavlonov filed suit on behalf of "Oina" to challenge the Press Department decision in the Temiryul Inter-district Civil Court. On 17 September 2001, the court dismissed the case due to lack of jurisdiction and instructed Mr. Mavlonov to bring his suit to the economic court. Mr. Mavlonov proceeded to the Samarkand Regional Economic Court on behalf of "Oina", which was replaced by "Simo" during the hearing. In court, he challenged the decision of the Samarkand Regional Administration Press Department of 28 March 2001. On 20 November 2001, this court held that "Oina" was in fact required to re-register, as this requirement was triggered by a founder's opt-out. However, the court ordered the Press Department to register "Oina" within one month, as well as reimbursing it for court fees and related expenses. The Press Department appealed.

2.9 On 20 December 2001 a three-judge appellate panel of the Samarkand Regional Economic Court affirmed that in conformity with article 48 of the Economic Procedure Code, in the case of a change in a party to the proceedings, an examination of the case should start anew. On this basis, the court repealed the decision requiring the re-registration of "Oina". "Simo" appealed to the Higher Economic Court for cassation review.

2.10 The Higher Economic Court upheld the decision of the regional court, but on a different basis. It held, in particular, that the economic court system did not have subject-matter jurisdiction because under article 11 of the Law "On Mass Media", registration decisions are to be appealed only to the civil courts by the founders or by the editorial board.

2.11 Mr. Mavlonov returned to the Temiryul Inter-district Civil Court where he had begun, but this time as plaintiff himself. He complained, *inter alia*, about the arbitrary decisions taken by the Head of the Press Department, who required Mr. Mavlonov to find an additional founder for "Oina" after the first opt-out, despite the fact that under paragraph 4 of the annex to Resolution No. 160, a mass media entity could be registered even with just one founder. A decision was rendered on 27 May 2002. The inter-district court noted a new allegation by the Press Department that "Simo"'s financial situation was insecure; it also prominently noted remarks by the Press Department that Mr. Mavlonov was 'not a qualified journalist by education'. The court held, firstly, that under the authority of paragraph 9 of Resolution No. 160, the founder's opt-out did indeed trigger a new obligation on "Oina" to re-register. Secondly, it upheld the Press Department's denial of the re-registration application. In so doing, it did not advert to any

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<sup>6</sup> Newspapers cleared for publication were given an official stamp; those without stamps were prohibited from being published.

alleged violations of article 6 of the Law “On Mass Media”. The basis for its holding, instead, was that there were shortcomings in the re-registration application: specifically, that the date of the newspaper’s statute did not correspond with the date of its adoption; four pages of “Simo”’s statutes were missing; and the surname of “Simo”’s director was inaccurate.

2.12 Mr. Mavlonov appealed to the Samarkand Regional Civil Court, which delivered its judgment on 28 June 2002, affirming the decision of the inter-district court. After repeating the technical requirements for registration as set forth in Resolution No. 160 at paragraph 4, the court wrote: ‘Based on these Regulation requirements and the law “On Mass Media”, the newspaper’s activity was not compliant with its aims and was contrary to the law, which was correctly mentioned’ by the Press Department in its decision. At another point, the court wrote that it ‘also takes into consideration the financial situation of [“Simo”]’.

2.13 Before proceeding with further appeals, on 20 August 2002, Mr. Mavlonov submitted another application for “Oina’s” re-registration to the Press Department with “Simo” as founder, which was rejected on 20 September 2002. A letter from the Press Department stated that the grounds for refusal were the poor financial situation of the paper, as well as the fact that no changes had been made to the aims and objectives contained in the newspaper’s statutes. However, these had not hitherto been the subject of adverse comments, either from the Press Department or the courts. Earlier, they had only alleged that “Oina’s” aims and objectives were not consistent with its statutes.

2.14 Mr. Mavlonov then appealed for supervisory review to the President of the Samarkand Regional Court, and the Supreme Court, which dismissed his appeals on 5 November 2002 and 2 May 2003, respectively; further attempts to seek review in the Supreme Court were dismissed, most recently on 23 September 2004. Mr. Mavlonov concluded that further requests to the Supreme Court would be futile, and that, therefore, all domestic remedies had been exhausted.

The case of Mr. Sa’di

3.1 The other author, Mr. Sa’di, a member of the country’s Tajik ethnic minority and a regular “Oina” reader, does not presently have, nor has he ever had, any practical possibility of challenging the denial of “Oina’s” re-registration application in the courts. He could not have joined with “Oina” in the original suit, because the civil court system denied jurisdiction of the case and sent it to the economic courts, where he, as a reader, had no standing to sue. By the time the case was sent back to the civil court system, eight months had passed. There had been no coverage of the litigation by the media, and so Mr. Sa’di had no way of knowing that a civil case was being initiated. Consequently, he had no reasonable opportunity to participate in the civil litigation at that point. Once he had missed the opportunity to participate at the trial level, he was barred from participating in any of the appellate proceedings. Nor could Mr. Sa’di have litigated the issues thereafter on his own behalf, having been unable to join “Oina” in the original suit, because of the combination of articles 60 and 100 of the Civil Procedure Code, whose effect was to make the decision of the courts regarding the issue of “Oina’s” re-registration final as to Mr. Sa’di. The only other hypothetical possibility for him would have been to seek a finding that the registration regime itself was unconstitutional. However, only the Constitutional Court has the jurisdiction to decide regarding the constitutionality of laws; and Mr. Sa’di, as an ordinary citizen, has no standing before this court.

3.2 Mr. Sa'di submits that it would have been perfectly futile for him to have attempted to initiate proceedings in the local courts to vindicate his rights under articles 19 and 27 of the Covenant. As the Committee has explained, it is a 'well established principle of international law and of the Committee's jurisprudence' that one is not required to 'resort to appeals that objectively have no prospect of success'.<sup>7</sup> Moreover, it does not matter whether the unavailability of a remedy is *de jure* or *de facto*; in either case, a victim is excused from the futile exercise of pursuing it.<sup>8</sup>

### **The complaint**

4.1 Mr. Mavlonov claims that the refusal of the Press Department of the Samarkand region to re-register the Oina newspaper (of which he was the editor) amounts to a violation by the State party of his right to freedom of expression (in particular his right to impart information in print), as protected by article 19 of the Covenant. He also claims that he was prevented from enjoying his own culture, in community with other members of the Tajik minority in Uzbekistan, in violation of his rights under article 27 of the Covenant. He finally claims to be a victim of violation of article 2, in conjunction with the articles 19 and 27 in that the State party failed to take measures to "respect and ensure" the rights recognised in the Covenant.

4.2 Mr. Sa'di claims that the refusal of the Press Department of the Samarkand region to re-register the Oina newspaper (that he was buying and reading on a regular basis) amounts to a violation by the State party of his right to freedom of expression (in particular his right to receive information and ideas in print), as protected by article 19 of the Covenant. He further claims to be a victim of a violation of his rights under article 27, as he was prevented from enjoying his own culture, in community with other members of the Tajik minority in Uzbekistan. He finally claims to be a victim of violation of article 2, in conjunction with the articles 19 and 27 in that the State party failed to take measures to "respect and ensure" the rights recognised in the Covenant.

4.3 Both authors also claim that the State party's registration regime for print media is *per se* in violation of article 19, paragraph 3, and as such constitutes a restriction of the freedom of expression.

### **State party's observations on admissibility and merits**

5.1 On 10 December 2004, 27 March 2006, and 2 June 2006, the State party was requested to submit its observations on the admissibility and merits of the communication. On 30 August 2006, the State party recalled the facts of the case and added that article 13 of the Law "On Mass Media", on the basis of which "Oina's" license to publish was cancelled by the Press Department on 28 March 2001, stipulated that the application for mass media registration should indicate its (1) founder(s); (2) title and working language(s) and legal address; (3) aims and tasks; (4) targeted readership (audience); and (5) planned periodicity of publication or broadcast, number

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<sup>7</sup> See, for example, Pratt and Morgan v. Jamaica, Communications Nos. 210/1986 and 225/1987, Views adopted on 6 April 1989, paragraph 12.3.

<sup>8</sup> See, for example, Dermit Barbato v. Uruguay, Communication No. 84/1981, Views adopted on 21 October 1982, para.9.4.



of copies, as well as sources of funding and material and technical supplies. A change in any of the above data requires a re-registration.

5.2 The State party also refers to paragraph 5 of the 4th Ruling of the Plenum of the Supreme Court of Uzbekistan “On Certain Issues of Conformity in the Consideration of Civil Cases in Court” of 7 January 1994, according to which a registration of mass media or refusal to do so, as well as claims related to the discontinuation of their activities, are within the competency of the courts of general jurisdiction (see paragraph 2.10 above). The State party concludes that the decisions of the domestic courts are substantiated and in accordance with the law.

### **Authors’ comments on the State party’s observations**

6.1 On 15 November 2006, the authors added that the delay in the submission of the State party’s observations, in contravention of the Committee’s Rules of Procedure, has unreasonably continued the harm to their right to freedom of expression under article 19 of the Covenant: respectively, Mr. Mavlonov’s ability to publish “Oina”, and Mr. Sa’di’s right to receive information and ideas in print. They further submit that this delay also continued the harm to their right under article 27 to enjoy their own culture, read together with article 2, which requires the State party to take proactive measures to ‘respect and ensure’ the rights recognised in the Covenant. They state that one of the authors, Mr. Mavlonov, has had to flee Uzbekistan since the communication was submitted to the Committee.

6.2 The authors further submit that the State party failed to address any of the specific claims made in their initial submission. While the State party claimed that ‘the decisions of the domestic courts are substantiated and according to the law’, the authors argue that the substance of their communication before the Committee is not the compliance of the actions taken against them by the State party’s authorities in accordance with domestic law but rather the non compliance of the latter with the law of the Covenant. The State party has confused the notions of its domestic law with the autonomous notion of ‘law’ in article 19, paragraph 3, of the Covenant. The restriction was not ‘provided by law’ as understood under article 19, paragraph 3, and was not ‘necessary’ for the protection of a legitimate aim.

### **Issues and proceedings before the Committee**

#### **Consideration of admissibility**

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of Procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as required under article 5, paragraph 2, of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. It also notes that the State party did not contest that domestic remedies in the present communication have been exhausted with regard to any of the authors.

7.3 The Committee considers that the authors’ claims have been sufficiently substantiated for purposes of admissibility, and declares them admissible.

### Consideration of the merits

8.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee notes that in its submission on the authors' allegations, the State party has not provided any specific observation on the claims with regard to articles 19 and 27, but it has merely stated that the decisions of the domestic courts are substantiated and in accordance with the law. In the absence of any other pertinent information from the State party, due weight must be given to the authors' allegations, to the extent that they have been properly substantiated.

8.3 With regard to article 19, the authors claimed in great detail that the refusal to re-register "Oina" by the State party's authorities is in violation of Article 19 of the Covenant in its failure to be 'provided by law' and to pursue any legitimate aim, as understood under article 19, paragraph 3. In the Committee's view, issues related to the registration and/or re-registration of mass media fall within the scope of the right to freedom of expression protected by article 19. The Committee observes that article 19 allows restrictions only as provided by law and necessary (a) for respect of the rights and reputation of others; and (b) for the protection of national security or public order (*ordre public*), or of public health or morals. It recalls that the right to freedom of expression is of paramount importance in any society, and any restrictions to the exercise of must meet a strict test of justification.<sup>9</sup>

8.4 In the present case, the Committee is of the opinion that the application of the procedure of registration and re-registration of "Oina" did not allow Mr. Mavlonov, as the editor, and Mr. Sa'di, as a reader, to practice their freedom of expression, as defined in article 19, paragraph 2. The Committee notes that the State party has not made any attempt to address the authors' specific claims, including Mr. Mavlonov's reference to the decision of the Commission which suggests that the content of the "Oina" is the reason for the denial of the re-registration (see paragraph 2.6 above). Nor has it advanced arguments as to the compatibility of the requirements, which are *de facto* restrictions on the right to freedom of expression, which are applicable to the authors' case, with any of the criteria listed in article 19, paragraph 3, of the Covenant. The Committee therefore finds that the right to freedom of expression under article 19 of the Covenant, respectively, Mr. Mavlonov's ability to publish "Oina" and to impart information, and Mr. Sa'di's right to receive information and ideas in print, has been violated. The Committee notes that the public has a right to receive information as a corollary of the specific function of a journalist and/or editor to impart information. It considers that Mr. Sa'di's right to receive information as an "Oina" reader was violated by its non-registration.

8.5 As to the authors' claim regarding the mass media registration regime as such constituting an independent violation of article 19, paragraph 3, the Committee concludes that it is not necessary to decide on this issue, in light of the finding of a violation of this provision in the authors' case, and especially with regard to the limited information available before it.

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<sup>9</sup> See, *inter alia*, Kim v. the Republic of Korea, Communication No. 574/1994, Views adopted on 3 November 1998 and Park vs. the Republic of Korea, Communication No. 628/1995, Views adopted on 20 October 1998.

8.6 As for the authors' claim under article 27, the Committee explained in its General Comment No. 23 on this provision, that this article 'establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which ... [individuals] are already entitled to enjoy under the Covenant'.<sup>10</sup> It specifically noted that the 'protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned'.<sup>11</sup> Finally, the Committee has emphasized that article 27 requires State parties to employ '[p]ositive measures of protection [...] against the acts of the State party itself, whether through its legislative, judicial or administrative authorities [...]'.<sup>12</sup>

8.7 In this respect, the Committee has noted the authors' uncontested claim that "Oina" published articles containing educational and other materials for Tajik students and young persons on events and matters of cultural interest to this readership, as well as reported on the particular difficulties facing the continued provision of education to Tajik youth in their own language, including shortages in Tajik-language textbooks, low wages for teachers and the forced opening of Uzbek-language classes in some Tajik schools. The Committee considers that in the context of article 27, education in a minority language is a fundamental part of minority culture. Finally, the Committee refers to its jurisprudence, where it has made clear that the question of whether Article 27 has been violated is whether the challenged restriction has an 'impact [...] [so] substantial that it does effectively deny to the [complainants] the right to enjoy their cultural rights [...]'.<sup>13</sup> In the circumstances of the present case, the Committee is of the opinion that the use of a minority language press as means of airing issues of significance and importance to the Tajik minority community in Uzbekistan, by both editors and readers, is an essential element of the Tajik minority's culture.<sup>14</sup> Taking into account the denial of the right to enjoy minority Tajik culture, the Committee finds a violation of article 27, read together with article 2.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of the authors' rights under article 19 and article 27, read together with article 2, of the International Covenant on Civil and Political Rights.

10. Under article 2, paragraph 3(a), of the Covenant, the State party is under obligation to provide Mr. Mavlonov and Mr. Sa'di with an effective remedy, including the reconsideration of "Oina's" application for re-registration, and compensation for Mr. Mavlonov. The State party is also under obligation to take measures to prevent similar violations in the future.

11. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has

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<sup>10</sup> Human Rights Committee's General Comment No. 23 (1994), para.1.

<sup>11</sup> Ibid, para.9.

<sup>12</sup> Ibid, para.6.1

<sup>13</sup> See Länsman et al. v. Finland, Communication No. 511/1992, Views adopted on 26 October 1994, para.9.5.

<sup>14</sup> Ibid, paras.9.2 and 9.3.

undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within one hundred eighty days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

**APPENDIX****Separate opinion of Committee members Sir Nigel Rodley and Mr. Rafael Rivas Posada**

We do not agree that Mr. Sa'di has been the victim of a self standing violation of article 19(2). On the other hand, we do consider he has been the victim of violation of article 27, read together with article 19.

We find the Committee's literalist reading of the right to receiving information and ideas is unconvincing. The Committee's position would require it to treat every potential recipient of any information or ideas that have been improperly suffered under article 19 as a victim in the same way as the person having been prevented from expressing or imparting the information or ideas. Thus, it could find itself dealing with communication from every reader or viewer or listener of a medium of mass communication that has been improperly closed down or whose content has been improperly suppressed. This is not a 'floodgates' argument. Rather it is evident that its literalist approach may simply not be the most plausible interpretation of article 19(2). For us, this aspect of Mr. Sa'di's complaint smacks of *actio popularis*.

Moreover, it was simply unnecessary for the Committee to take this far-reaching position in the instant case. There is no disagreement that Mr. Sa'di was a victim of a violation of article 27, paragraph 2. Moreover, we believe that Mr. Sa'di is a victim of a violation of article 19 read together with article 27. This is because of the special nature of article 27 which envisages the enjoyment of rights by persons as members of minority communities. This should have been a sufficient finding for the Committee in this case.

[signed] Sir Nigel Rodley

[signed] Mr. Rafael Rivas Posada

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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