Ministry of Foreign Affairs
Republic of Uzbekistan

COMMENTS

ON THE REPORT PREPARED BY THE OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (ODIHR) ON MONITORING THE LEGAL TRIAL IN UZBEKISTAN, SEPTEMBER-OCTOBER 2005, AGAINST 15 ACTIVE PARTICIPANTS OF THE ANDIJAN EVENTS IN MAY 2005

(Tashkent, April 19, 2006)

I. EXECUTIVE SUMMARY

During September 20 – November 14, 2005 in Tashkent an open trial against active organizers and perpetrators of terrorist acts in Andijan took place. In the course of the trial it was proved that death of civilians had not resulted from excessive use of force, including chaotic and intentional shooting at civilians by Security Forces, as it was stated in the ODIHR report, but due to a well-planned and thoroughly organized terrorist act.

Regarding the invitation of the ODIHR representatives to the trial it should be mentioned that the Uzbek Government had declared long before the trial its intention to conduct an open and transparent judicial examination against the most active participants of the Andijan events. All interested parties were invited, including diplomats, journalists and representatives of international and non-governmental organizations.

The statements of the ODIHR observers on the late mailings of invitations to the trial and reference to a number of technical problems that occurred through no fault on the Uzbek side, appear unsound because the beginning of trial was determined only when both parties – the prosecution and the defense – were ready for the judicial procedure.

With regard to the ODIHR statements that its representatives were rejected to get an access to the main participants of the trial (including the defendants), and to the materials (including full text of the judgment on conviction), it should be mentioned that this denial was valid. According to Criminal Procedural Code of the Republic of Uzbekistan interrogations of suspects and defendants, and other procedural actions in the stage of the preliminary investigation, as well as during the judicial examination can be performed only by the inquirer, investigator, prosecutor and judge with participation of legal defenders. Representatives of non-government organizations, including the ODIHR, have no right to conduct interrogations, participate in procedural actions taken by the investigation and court. Also they have no right to access to the documents and materials of a criminal case.

Such a practice does not contradict to the norms of international law, including the OSCE Copenhagen Document, which the ODIHR refers to in its report.

ODIHR's interpretation of the actions of defense lawyers as "inadequate defense" is unjust. During the trial the OSCE representatives witnessed the direct contention with participation of defenders. The defense and prosecution received equal conditions and opportunities for unbiased and contested litigation.

On the basis of subjective and prejudiced perceptions of defendants' behavior by the ODIHR representatives the report sates on violation of international standards of justice that supposedly took place in the trial.

The ODIHR report has labeled the defendants' testimonies as "infeasible and given under the compulsion". However, these testimonies cannot be doubted because all the circumstances described in the testimonies of victims and witnesses were fully confirmed during the examination of evidence, which obtained through the investigation. There are no ascertained facts that the evidence was acquired by torture, cruel treatment or pressure on the witnesses.

Advocates, who defended the interests of the accused were invited from the legal aid agencies and private firms of attorney. All of them are independent from the government and other law enforcement bodies.

The ODIHR report makes a false conclusion that the closing arguments of the defense in most cases did not include the analysis of evidence that could be interpreted in favor of the accused. In this regard, it should be noted that the court dropped from the indictment a number of articles that substantially affected the punishment. This fact proves that defense was indisputably effective and unbiased.

All defense lawyers had an opportunity, which they used repeatedly, to interrogate the defendants and conduct the cross-examinations. There was no limit for the defense lawyers in quantity of witnesses, which they could have invited to the trial. What kind of questions to be asked and what tactics to be used – this is the universally acknowledged right of defense lawyers. None of other participants of the trial had interfered to this.

It is surprising to see the report's statement that defense lawyers avoided meetings with the ODIHR representatives. It is the right of every citizen to decide whether to meet with certain people or not.

Invitation of witness M. Zokirova to the trial – a person implied in the report – and her testimony, on the contrary, proves the fairness of the legal proceeding and defeats demagogic statements that the trial was allegedly staged.

In response to the ODIHR's apprehension about the absence of defendants' relatives in the court, it is worth mentioning that the majority of them left Uzbekistan soon after the Andijan events and acquired a false status of "refugees" in far abroad. Even though, everyone willing to participate in the trial had an unimpeded access to the courtroom, no requests were received from the relatives of defendants.

On the subject of access to the defendants who were the citizens of Kyrgyzstan, it should be noted that this issue was resolved according to the norms of national legislation and provisions of Vienna Convention on Consular Relations of 1963, which Uzbekistan is a party.

It is true that none of 15 sentenced individuals appealed the court decision or referred to the Court of Cassation, even though criminal-procedural legislation provides legal means of the judgment appeal that can be done by the sentenced, his/her attorney, legal representative, offended party or its representative or a prosecutor.

II. THE ANDIJAN EVENTS

The Andijan events did not have any relation to the trial against 23 so-called businessmen. These individuals, to whom ODIHR refers as businessmen, were accused in committing the crimes against Constitutional order of the Republic of Uzbekistan, and instituted the criminal proceedings according to the national legislation.

The protests which took place near the court building during that proceeding were used by terrorists as an excuse – allegedly illegal charges against a group of members of religious-extremist sect "Akramiilar". They needed it to involve the maximum number of people as their supporters.

The speeches looked staged. The organizers also invited terrorists from Kyrgyzstan and Uzbekistan (their identity has been established by now) to participate in demonstrations. With the purpose of conspiracy, the terrorists were dressed in specially prepared clothes and resided in houses of some group members (search in these houses revealed fliers of Hizb-ut-Tahrir and other religious-extremist literature).

Moreover, specially trained groups of women, children and senior citizens (relatives and friends of the terrorists) were supposed to act out “anti-government demonstrations of civilians”.

With regard to actual events it should be noted that on May 12-13, 2005 in Andijan several groups of armed individuals perpetrated a number of terrorist acts including an attack of a military unit and seizure of weapons and ammunition; release of over 500 prisoners from the city prison and their arming; an attack of city administration and civilian objects; taking several officials, law enforcement representatives, and civilians into hostage; organization of an attempt of armed take over of power in Andijan region and destabilization of situation in Uzbekistan.

In order to regulate the situation in Andijan, a special committee on hostage release and neutralization of terrorists was organized. The committee faced the challenge of doing everything possible to minimize the life threat to the civilians and to free the hostages.

Negotiations lasted for almost 11 hours. The Uzbek authorities were ready to settle for a serious compromise: they agreed to release 6 arrested extremists and offered terrorists buses and unobstructed transportation to the area of their choice.

However, during the whole time, terrorists were putting new, deliberately unrealized conditions: in particular, they demanded to free a number of imprisoned leaders of religious-extremist organizations, and to deliver them on an airplane to Andijan.

Thus, making their demands a political issue, the criminals deliberately led the negotiations to the dead-end. All attempts of the Uzbek authorities to resolve the conflict peacefully failed. In these conditions the only right decision was to start a close cordon of the regional administration building. In response to this action the terrorists opened fire.

Having understood that the government troops had been preparing for an assault, and trying to take the lead, the criminals, in several columns, covering themselves with hostages and using weapons, left the building of regional administration. At the same time, the government troops, in order to prevent victims, allowed the armed groups to leave in three directions towards the Uzbek-Kyrgyz border.

Active participants of the events, their relatives and friends retreated to a territory on the border of Uzbekistan and Kyrgyzstan according to a previously planned scheme.

The general strategy of the terrorist acts also contained an idea to initiate a broad informational-propagandistic activity against Uzbekistan with the purpose of involving international human rights organizations.

This is evidenced in the arrival to Andijan before the events the representatives international human rights organizations, foreign media and international charities. All these representatives came to Andijan for “operative coverage of the uprising in Andijan”.

A hasty dissemination of unverified information without consideration of an official position of Uzbekistan led to emergence of groundless calls for international investigation.

These calls are considered by the Uzbek side as a method of further increase of international pressure onto the Republic and interference into the internal affairs of the sovereign state. Any interference into the internal affairs of the Republic of Uzbekistan according to its Constitution is an infringe of inviolability and integrity of Uzbekistan and is a violation of its sovereign rights.

It should be mentioned that an armed attack, deliberate murder and taking hostages are considered as the cruelest crimes in any country of the world and are severely punishable by law. The investigation of such crimes is carried out within the framework of criminal legislation and competent national authorities.

The crimes of 12-13 May, 2005 took place on the territory of Uzbekistan and, according to Articles 3 and 4 of Criminal Procedural Code and Article 11 of Criminal Code of Uzbekistan are under the jurisdiction of the Republic of Uzbekistan.

There is no any international document, which could force the sovereign state to conduct international investigation of the issues related explicitly to its internal competence.

The Uzbek Government has acted in compliance with existing international legal norms, in particular according to Article 51 of the UN Charter.

As for the ODIHR report prepared on results of mission to Kyrgyzstan on June 20, 2005, earlier the Uzbek side had voiced its attitude of this document, content of which based only on speculations and assumptions, as well as on interviews with the most active participants of the events in Andijan. Obviously, these circumstances are not to be accepted as the evidence to the real events occurred in Andijan.

Most of the Uzbek citizens, who crossed the state border, left Andijan under the compulsion and deceit. They were kept under the constant psychological pressure by the criminals, and intimidated of assumed repressions if they return home.

Clear prove for this is the fact that a number of accused, who were among so called "refugees" and had a chance to go into hiding, later gave themselves up to the law enforcement bodies. They explained during interrogations that the terrorists forced them under the arms threat to move into Kyrgyzstan, where they were forcedly kept and intimidated with "bringing to account" if they return back to Uzbekistan.

Publication of the ODIHR report with the preliminary conclusions on May 13, 2005 events in Andijan, distributed on June 20, 2005 became a flagrant violation by the ODIHR of the mandate given to it by the OSCE participating States.

Unfortunately, the ODIHR observers could not take an unbiased approach to the court trial on 15 active participants of the events in Andijan, calling in question the work of investigation and judiciary bodies of Uzbekistan in criminal proceedings.

Despite the fact of ensured attendance of the ODIHR observers during the trial, the mentioned report is mostly based on unconfirmed information spread by the dubious sources. At the same time, the Uzbek side follows the clear facts and proves, obtained during the thoroughly conducted investigation and court trial according to the norms of legal procedure.

III. ON MONITORING OF THE ANDIJAN TRIAL BY THE OSCE/ODIHR

ODIHR access to monitor the Andijan trial process

Immediately after the tragic events in Andijan the Government of Uzbekistan declared its adherence to a transparent and unbiased investigation. Independent parliamentary commission and international working group on monitoring the investigation were set up. The latter consisted from the representatives of diplomatic corps in Tashkent, and all necessary conditions were provided for them.

Despite the invitation of the Uzbek side, the Western countries refused to participate in the monitoring group. Thus, these countries clearly demonstrated their unwillingness to the cooperation and dialogue.

Between September 20 and November 14, 2005 the open court trial over the active organizers and executors were held in Andijan.

During the trial the observers had an opportunity to get to know of investigation materials, testimony of witnesses and victims, as well as the entire evidence base (audio and video materials, conclusions of numerous expertise, protocols of on-site inspections, seized weapons, both captured during the attack on military facilities and brought by the terrorists from outside). Practically all the OCSE/ODIHR experts had an opportunity to observe the entire process of the court examination of the evidence base.

The ODIHR report has not given any established fact of violation of the procedural norms during the trial. The report is reach in unfounded assertions that have no real ground.

Access in the pre-trial stage

The OSCE/ODIHR report makes biased and illegitimate conclusion on lack of access to the defendants and materials of the criminal case.

According to the Criminal Procedural Code of the Republic of Uzbekistan, the interrogation of the suspect, accused and defendant, and other procedural actions during the preliminary investigation are carried out by the inquirers, investigator, prosecutor and the court with participation of the defense.

The norms of the current criminal-procedural legislation do not stipulate the right for other officials and the representatives of NGO to interrogate and participate in the procedural actions by the investigation and the court, as well as access to the documents, materials of the criminal case.

The mentioned provisions and existing practice does not contradict to the norms of international law, in particular, the OSCE human dimension documents, including Copenhagen Document, which ODIHR refers to in its report.

Invitation by Uzbekistan and commencement of ODIHR monitoring

The Government of Uzbekistan long before the trial declared its intention to conduct an open and transparent court hearings on most active participants of the Andijan events.

The Uzbek side ensured the ODIHR representatives and other interested parties, including diplomats and journalists, a full participation in the trial.

Statements by the ODIHR observers on “late invitation” to the process and their references to a number of technical aspects, which occurred not by the fault of the Uzbek side, look baseless.

The ODIHR’s statements on interest to involve additional independent experts to monitor the trial openly call in question the competence of its own observers.

It is also necessary to note, that after the trial the Uzbek side agreed to organize in November 2005 a meeting for two the ODIHR staff members – Ms. Ringaard-Pedersen, Head of the Human Rights Section and her deputy Ms. Lyth – with the judges, prosecutors and defense lawyers who took part in the hearings on 15 accused individuals. However, the Office recalled the experts from Uzbekistan.

Access to the courtroom

It is obvious that the states take precautions and necessary measures to ensure security at the court hearings, especially when the trials are held on the aggravated crimes, including acts of terrorism. That is the reason of security measures and procedures, which described in the details in the ODIHR report.

Allegations by the OSCE/ODIHR on denial for the representatives of international organizations to have an access to the courtroom are absolutely groundless.

Despite the constant presence of victims, civil plaintiffs and witnesses in the courtroom, the observers from the ODIHR were granted a full access to the courtroom. The ODIHR representatives attended at the trial up to the end.

This can be proved by more than 100 representatives of international and local media agencies, diplomatic missions, international organizations, including the UN, UNHCR, SOC, as well as international human rights organizations, e.g. Human Rights Watch, American Bar Association, which also observed the trials.

The trial monitoring had not been restricted by the judicial authorities. Moreover, two additional halls with a real-time mode video system were allocated next to the courtroom in order to create appropriate conditions for the monitoring. The observers had a free access to these halls and the courtroom.

Access to the trial protagonists and materials

In the report the representatives of ODIHR put illegitimate demands from the Uzbek authorities on full access to the accused and materials of the criminal case during the court hearings.

It is necessary to recall that in accordance with the Criminal Procedural Code of the Republic of Uzbekistan the interrogation of the suspect, accused and defendant, and other procedural actions at the stage of the court investigation are carried out by the inquirers, investigator, prosecutor and the court with participation of the defense.

The norms of the current national criminal-procedural legislation do not stipulate the right for the individuals who are not a part of the court hearings, including representatives of public organizations, to interrogate and participate in the procedural actions of the investigation and the court, as well as research in the documents and materials of the criminal case.

It should be underlined that the trial monitoring does not mean a direct participation of observers in the process of court investigation of evidences. Such a participation would violate the principles of independence of the court.

Preliminary investigation and the court hearings were conducted in accordance with Criminal Procedural Code of Uzbekistan. All the circumstances of the case were thoroughly investigated, verified, including the evidences that amounted sufficiently to prove the guilt of those who had been brought to justice. Every accused was provided with the defense lawyers who had a free access to their defendants.

There were no claims of discontent from the accused or the lawyers regarding illegitimate actions by the court-investigation bodies or pre-trail detentions staff.

IV. EVALUATION OF OSCE/ODIHR MONITORING AND CONCLUSIONS ON THE ANDIJAN TRIAL

The Indictment

The indictment, which was made in full accordance with Article 379 of Criminal Procedural Code of Uzbekistan, is to be presented only to the accused and the defense.

In accordance with Article 439 of Criminal Procedural Code of the Republic of Uzbekistan, at the beginning of this trial the indictment were read out by the state prosecutors. The statement in the report that "the ODIHR was not given access to the indictment by the Uzbek authorities, but was able to obtain parts of the indictment from other sources" is not objective because the indictment was made public during the trial and widely broadcasted on TV and radio.

Content of the indictment

There is no ground for the claim in the ODIHR report that the main text of the indictment in the case of each defendant was identical. Probably the ODIHR experts are not aware that in accordance with Criminal Procedural Code of the Republic of Uzbekistan (Article 361) there are certain requirements to the content of the Resolution on bringing the accused to participate in the criminal case. It should include the following data:

-name, surname and patronymic name of the accused, as well as date of his/her birth;

-the substance of the indictment, i.e. description of incriminating crime with indication of place and time of its perpetration, as well as other substantial circumstances;

-article, part and item of Criminal Code that stipulates for the crime.

At that the Resolution on bringing all the accused who had been involved this case were drawn up in accordance with abovementioned requirements of the law.

The documents describe in details the individual actions of every terrorist at the objects of the attacks and in other places of the events. The documents also concretely indicate the incriminating acts, including detailed description of arms used by terrorists and the consequences of this.

The attention has to be drawn to the fact that the ODIHR report uses incorrectly the term of "indictment" that shows that its experts who monitored the trial has no understanding of difference between "indictment" and the Resolution on bringing the accused to participate in the criminal case.

Publicly-available information on the defendants

All information regarding the trial on the Andijan events was distributed daily among the journalists and representatives of diplomatic corps as a press-releases of the Supreme Court of the Republic of Uzbekistan.

The detailed reports were distributed by many of local mass media, including TV, radio and newspapers.

The trial

Arrangements in the courtroom

The trial on 15 active participants of the Andijan events was organized in strict accordance with criminal-procedural legislation of the Republic of Uzbekistan, and the participants were provided with all necessary security measures.

Absence of arguments for the defense

The representatives of ODIHR, referring to unproved sources, groundlessly call fairness of the trial in question.

All the defendants were provided with the lawyers who had free access to their clients.

During the trial the ODIHR representatives personally eye-witnessed the testimonies of victims, civil plaintiffs, witnesses (overall 300 persons). They also eye-witnessed the direct contend in the trial where the defense lawyers also participated. However, in the report their actions have unfairly mentioned as “inadequate defense”.

The ODIHR representatives did not wish to see that the parties (the defense and prosecution) were provided with equal conditions and opportunities to conduct the impartial and contending trial.

Conduct of the defendants

On the basis of subjective and biased perception of conduct of the defendants by the ODIHR representatives, the report allegedly states on violations of international standards for the court proceedings.

In the ODIHR report the testimonies of the defendants are indicated as “unrealistic and given under compulsion”. However, these testimonies cannot raise doubts because all the circumstances mentioned in testimonies of the defendants and witnesses were fully proved during the investigation of collected evidences.

No facts had been determined that the testimonies were under the torture, brutal treatment or pressure on the defendants. The statement in the report that “the defendants appeared drained and resigned” is unfounded and groundless.

During the trial chairman repeatedly asked the accused whether unlawful treatments, coercion or psychological pressure had been used against them. The defendants always gave a negative answer this question.

During the preliminary investigation and the trial the defendants and their lawyers had not complained or made statements on any form of pressure on them. At the preliminary investigation each of the defendants had been medically examined. According to the conclusions of these examinations no signs of coercion were determined.

With regard to the statements mentioned in the ODIHR report it is worth to remind that according to Article 46 of Criminal Procedure Code of the Republic of Uzbekistan, the defendant has the right to testify in essence of accusations. At the same time the defendant is not obligated and not bound to prove his/her innocence or any other circumstance of the case.

At that a sincere repentance is considered as a circumstance that mitigates the punishment (Article 55 of Criminal Code of the Republic of Uzbekistan).

During the trial by the initiative of the defendants (F.Khamidov, A.Yusupov, A.Ibragimov and others), the cross-examination of other defendants, eye-witnesses and victims were conducted in order to defend their positions. These circumstances have not mentioned in the ODIHR report. On the contrary, the report states that the defendants did not present the arguments to defend themselves.

Defense representation

The ODIHR's argument on non-appropriate execution by the defense lawyers of their duties during the trial is a subjective and tendentious view of authors of the report.

From the early beginning of the proceedings the defense lawyers had actively participated in the case. They had fully defended the interests of the accused at the time of their arrest, during the preliminary investigation and in the court.

During the preliminary investigation and at the trial the defendants had not made the statements on denial of chosen lawyers and/or replacement them.

During the trial chairman gave to all the lawyers an opportunity to interrogate the defendants and make cross-examinations in the interest of their clients. The defense has repeatedly used this.

The court did not make any limitations in inviting witnesses to the trial. The choice of questions to ask and tactics to defend the accused is generally recognized right of lawyers. No one from other participants of the trial intervened in this.

Actually, the defendants made a plea of guilt, which was similar in many aspects to the presented accusations. However, the claims that testimonies of the accused are derived from the opinion of prosecution are unjustified because, according to the norms of Criminal Procedural Code of the Republic of Uzbekistan, the indictment is composing on the basis of aggregation of the gathered evidences of the criminal case.

Furthermore, making plea of guilt or other testimonies, according to Article 46 of Criminal Procedural Code of the Republic of Uzbekistan, are the exclusive right of the defendant.

On the other hand, according to Article 55 of Criminal Code of the Republic of Uzbekistan, frank confession is recognized as a mitigating circumstance.

With regard to the claims that the trial did not investigate enough the evidences, it is necessary to note that during the preliminary investigation all circumstances, which must be proved, were thoroughly, comprehensively, fully and fairly investigated. As a result, the investigation had gathered the whole evidences, which completely exposed the defendants in committing the incriminated crimes.

The arguments of ODIHR that the defendants made a frank plea of guilt "against their will" are inconsistent.

Conduct of the sate-appointed defense lawyers

Advocates, who defended the interests of the accused were invited from the legal aid agencies and private firms of attorney. All of them are independent from the government and other law enforcement bodies.

During the preliminary investigation and the trial all defendants were provided with qualified lawyers, who participated in the investigation and court proceedings on the basis of orders signed and issued by the heads of the relevant firms of attorney (which are not state owned). They conducted their functions in accordance with the norms of laws of the Republic of Uzbekistan "On Advocatory", "On guarantees of the activity of advocates and social protection of advocates", as well as the criminal-procedural legislation. These norms state that an advocate is an independent party, which has the equal rights with all participants of the process at all levels of the legal proceedings.

According to Article 50 of Criminal Procedural Code, the defense lawyer is invited to the suspect, accused and defendant by their legitimate representatives and other individuals by the request or consent of the suspect, accused and defendant. The defense lawyer is allowed to participate in the case from the time of presenting the charges, stating the resolution on admission as a suspect or since the arrest. At the request of the suspect, accused or defendant the inquirer, investigator, prosecutor or the court provides the defense lawyer with the participation in the case. The inquirer, investigator, prosecutor and the court, carrying out the case, has the right to exempt the suspect, accused and defendant fully or partially from the payment for the legal aid. In that case expenses for remuneration of the lawyer's services is referred to the state's account.

By the law and as indicated in the Resolution of Plenary Session of the Supreme Court of the Republic of Uzbekistan from December 19, 2003 "On practice of application by the courts the laws that provides the suspects and the accuse defendants with the rights to be defended", the arrested has the right for a meeting and assistance of a lawyer from the time of arrest, and without limitation of number and duration of meetings.

These requirements of the law were completely observed during the investigations and trials on the criminal cases of individuals involved in the Andijan events.

The indisputable efficiency of the defense is irrefutably testified by the fact of removal of some articles from the charges of these individuals, which considerably influenced on the punishment.

The groundless statements of the ODIHR show obvious luck of knowledge of the principles and norms of the criminal-procedural legislation of the Republic Uzbekistan. It also demonstrates a deliberately biased attitude to the trial on individuals accused for the committing a number of grave crimes.

Witnesses

128 victims and their representatives, 50 civil plaintiffs, 103 witnesses were interrogated. Video material recorded by the terrorists was attached to the final expertise. Audio records of negotiations of Z.Almatov, Minister of Interior, and S.Begaliev, Governor of the Region with Kobil Parpiev, audio records of terrorists among themselves, as well as dozens of photos seized during the investigation were also demonstrated

Besides, the court examined more than 2000 reports on various types of expertise conducted within the criminal case.

M.Zakirova's testimony, which the ODIHR refers to, is a subjective and biased interpretation of the Andijan events and it is fully disproved by the evidences collected within the criminal case.

M.Zakirova did not testify impartially in the trial because four of her relatives were the members of religious-extremist movement "akromiylar" and they actively participated in terrorist acts in Andijan.

On the other hand, invitation of M.Zakirovas to the trial once again clearly demonstrated the objectivity of the court and disproved any demagogical allegations that the trial was staged.

Closing arguments

The closing arguments of the prosecution were made on the evidences collected during the investigation and examined by the court, in particular, the analyses of the events in video shootings recorded by terrorists themselves.

All circumstances was thoroughly examined and appropriately evaluated, including such circumstances as a creation by terrorists the organized armed group, purposes and plans of their actions. They were proved by the materials of criminal case: statements of the accused, victims and witnesses, results of expertise, material and other evidences.

The closing arguments fully comply with the requirements of Article 409 of Criminal Procedural Code, and it contains all necessary attributes, which in the ODIHR report mentioned as absent.

Besides, taking into account the circumstances determined during the trial, at their closing arguments the prosecutors proposed to exclude from the indictment a number of incriminated charges for all the accused. This is an evidence of an impartial and contested nature of the trial.

Access of relatives and human rights defenders

So-called ODIHR's apprehensions caused by the absence at the trial of relatives of the accused are completely exaggerated. The majority of relatives have urgently left Uzbekistan right after the events in Andijan and received artificial "refugee" status in far abroad.

The beginning of the trial was announced by the Supreme Court in advance. All who desired to attend the process were granted a free access to the courtroom. However, there were no appeals from relatives of the accused to attend the trial.

There were no limitations for relatives to attend the trial, and both law enforcement agencies and the court did not receive any complaints in this regard.

Kyrgyz consular access to the Kyrgyz defendants

The issue of access to any foreign national is regulated by the norms of national legislation and provisions of Vienna Convention on Consular Relations of 1963, which Uzbekistan is a party.

The Judgment

Sentencing

The open trial confirmed many facts, which qualify the tragic events in Andijan (attack to military unit and prison, seizure of weapons, taking hostages) as well-planned in advance terrorist action with its organizers.

As the ODIHR report indicates, the judgment contained the detailed information on the events and previous activity of the defendants, as well as their actions during the events of 12-13 May in Andijan, including the following:

- information on the book "The Path of Faith" written by Akram Yuldashev;
- training of the sect members at an abandoned shooting ground, stadium and school gym in Kyrgyzstan;
- financial aid from overseas sponsors for the purchase of arms, mobile phones and vehicles;
- infringement of the Constitutional system;
- maintaining contacts with overseas sponsors and the spiritual leader;
- picketing of the courthouse in Andijan;
- getting blessing (fatva) from Akram Yoldashev;
- attacks on the military unit, police post and the prison, and killing servicemen and police officers;
- supplying the terrorists with weapons;
- illegal crossing of the Kyrgyz-Uzbek border by the support groups from Osh and Jalal-Abad;
- the battle at the local National Security Service building; seizing the regional Hokimiyat building and holding a meeting in front of it;
- taking hostages and torturing them;
- negotiations with the government officials;
- retreat towards the Kyrgyz border;
- settling in a refugee camp in Kyrgyzstan;
- subsequent arrests and surrenders of the accused.

During the investigation a number of persons who had been killed in terrorist acts in Andijan and the personality of each of them were completely identified. Moreover, the investigation displayed the facts of the burial of corpses by the relatives of victims without timely notification of investigating structures. It testifies about the striving of the Uzbek authorities to conduct unprejudiced and objective investigation and proceeding of all circumstances of acts of terrorism.

During the trial it was completely established that a general death-roll – 187 persons, including 94 terrorists, 60 civilians, 11 servicemen and 20 representatives of law enforcement bodies. 287 persons, including 91 civilians, 49 law enforcement representatives and 59 servicemen were injured.

The criminals took hostage 70 person, 15 of them were cruelly killed.

It is necessary to note that a number of victims, including civilians, had been killed by the terrorists during the first minutes of events, i.e. at late night between 12 and 13 May, 2005.

In the course of these terrorist acts 73 cars and more than 20 buildings were burned, the damage was caused for more than 3 billion sums.

All of these facts were confirmed by the admission of the criminals and testimonies of witnesses, as well as by the materials of investigation. The guilt of the convicted on this case, besides their plea of guilt and sincere repentance, was proved by the testimonial evidence of eyewitnesses, video and audio records made by the terrorists during the tragic events in Andijan. It was also proved by the conclusions of forensic, ballistic, chemical, fingerprint examinations, and set of other proofs, which are in the materials of criminal case.

The defendants brought in a verdict of guilty in premeditated murder under the aggravating circumstances, terrorism, infringement of the Constitutional order of the Republic of Uzbekistan and other crimes, and they were sentenced to the various terms of punishments in the form of imprisonment.

At the same time in the ODIHR report there is no indication about deliberate, premeditated murders of the representatives of law enforcement bodies and servicemen by the armed individuals during the attack on the facilities in Andijan.

Each of these facts of encroachments on the life and health, including ones of innocent citizens, was carefully investigated during the trial and underplayed of the judgment.

Observing the trial international community could evidently see the fire-arms in hands of so called “peaceful demonstrators”, burning historical and cultural monuments, burned cars, hostages who were scoffed and killed by the same “peaceful demonstrators”. The world also could clearly hear the true striving of the same “akramists” who deliberately pursuing the completely non-peaceful objectives.

All of these were exclusively confirmed in various materials of the criminal case and material evidences. The shown video record made by terrorists during the tragic events in Andijan in May 2005 can be added to these evidences. One must not disregard the record of telephone conversations between the government officials and these who participated in terrorist acts, and negotiations of terrorists among themselves during the events.

These proofs were completely investigated during the trial and stated in the indictment, copies of which were handed over in due time to all the defendants and lawyers represented their interests.

Besides a plea of guilt by the defendants, the court has thoroughly, comprehensively, fully and impartially examined many other proofs submitted by the investigation. Hereby the picture of the tragic events took place in Andijan was completely restored.

In accordance with the criminal-procedural legislation of the Republic of Uzbekistan the judgment can be appealed against by the convicted, his lawyer, legal representative, victim and his/her representative or protested by the prosecutor in the appeal or cassation order, as well as in supervisory order after the considered of the case in the appeal or cassation order.

The judgment of the Supreme Court of the Republic of Uzbekistan on the criminal case against 15 individuals was not appealed and protested in the appeal and cassation order and it has entered into the force.

V. ON CONCLUSIONS AND RECOMMENDATIONS OF ODIHR

The course and results of the trial testify that the investigation and court hearings on this criminal case were carried out in strict conformity with the procedural legislation of the Republic of Uzbekistan and universally recognized norms of international law.

Moreover, this process was transparent in a wide range and accessible for the international community in the face of diplomatic missions and international organizations, as well as foreign mass media. It is necessary to note that until now the similar, actually democratic approach to the legal proceedings has not been observed in judiciary practice of the majority of the OSCE participating States.

The results of conducted process testify that acts of terrorism in Andijan were planned in details and organized by the external destructive forces with the aim to change the Constitutional system in Uzbekistan.

The character and development of the events in Andijan confirmed that it had come out of undermining activities of extremist groups and their sponsors from abroad. The methods, which are typical of the terrorist and extremist organizations, have been used, namely:

-use of weapon for attacks;

-releasing of prisoners from a jail;

-taking hostages and the building of local administration;

-character of the demands by attackers – to release the prisoners which had been convicted for the terrorist activity;

-use of civilians as "living shield" which consisted from old men, women and children. Being covered by this "human shield" the attackers opened a fire first, using more than 300 units of small arms and having killed peaceful inhabitants, as well as the representatives of law enforcement bodies.

The measures undertaken by the law enforcement to suppress the actions of terrorists had a reciprocal character and were applied within the limits of commonly accepted standards of criminal law, such as "absolute necessity" and "necessary defense". These measures were fully correspond with the provisions of Basic Principles of Use of Force and Firearms by the Law Enforcement Officials, adopted in 1990 by the UN Eighth Congress on Prevention of Crime and the Treatment of Offenders. Also these measures were correspond with Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly Resolution 34/169 on December 17, 1979.

The firearms during the Andijan events were used only for the neutralization of violent actions by the militants, repulse their armed attacks, localization the negative consequences, and liquidation of the militants.

It is necessary to consider that despite all scrupulousness in preparation of the ODIHR report it has been overlooked that the victims showed all brutality used against peaceful inhabitants of Andijan by these who convicted and their accomplices. These facts were proved by the materials of the trial. Omission of this fact from the report of ODIHR clearly demonstrates that this institution uses "rude professionalism" in political insinuations and juggles with facts to own advantage. That kind of official distortion of the validity evidently testifies of deliberate aversion to the objective reality.

Statements in the ODHIR report that the number of victims in the Andijan events has not been established exactly, and that the trial in the Supreme Court of the Republic of Uzbekistan on 15 individuals involved in the Andijan events in May, 2005 was not fair, are unfounded and inconsistent to the content of the report (section “The judgment”). The requirements from the Government of Uzbekistan to establish an independent international investigation into the events in Andijan, and set aside the verdicts against the individuals who have been brought in a verdict of guilty in acts of terrorism and others especially grave crimes on May 12-13, 2005 in Andijan are incompetent.

In accordance with Article 19 of the Criminal Procedural Code of the Republic of Uzbekistan, the remain legal trials related with acts of terrorism took place in May 2005 in Andijan were examined on closed court sessions for the sake of security for victims, witnesses and other trial participants.

The examination of these cases were conducted on closed court sessions in accordance with the legal procedures and strictly in accordance with international standards and the local legislation. Some of these cases are examined at the appeal and cassation order.

Summarizing all the mentioned above, it has to be noticed that such an approach of the OSCE towards Uzbekistan gives rise to doubts in the sincerity of its intention to promote ideals of freedom and human rights. Frankly, the context of the ODIHR report is lack of common sense because it is contradicted to the actual proofs examined during the trial.

Thereupon the ODIHR’s statement on some kind of "injustice" took place during the open court sessions in Tashkent can be considered as groundless and quite enough bias accusations, which are coming from the aversion of some political powers to the justified and logical attitude of Uzbekistan towards any manifestation of terrorism, infringement of Constitutional order and territorial integrity of independent State.