

## 2015 OSCE Human Dimension Implementation Meeting

### **Side event: Mechanisms to investigate torture allegations in Kazakhstan, Kyrgyzstan and Tajikistan: Problems and solutions (24 September 2015)**<sup>1</sup>

The NGO coalitions against torture in Kazakhstan, Kyrgyzstan and Tajikistan, Helsinki Foundation for Human Rights (Poland) and International Partnership for Human Rights (Belgium) are concerned that in Kazakhstan, Kyrgyzstan and Tajikistan no effective investigations are conducted into allegations of torture and other forms of ill-treatment in most cases, thus perpetuating a vicious circle of torture and impunity. In many cases victims are afraid to lodge complaints for fear of reprisals.

As parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment all three countries have committed themselves to conduct prompt, thorough, impartial and independent investigations, wherever there is reasonable ground to believe that an act of torture has been committed. They have also committed themselves to protect the complainant and witnesses against reprisals, such as further torture, ill-treatment or intimidation.

In August 2014, **Kazakhstani** officers of the police station in the Kushmurun village of Kostanay region beat 51-year old **Alexander Albrandt** and one grabbed his throat until the man felt he was suffocating. Alexander passed out and the forensic expert recorded bruises and abrasions all over his body. Police investigators and the Anti-Corruption Agency did not conduct effective investigations into the allegations and the criminal case has been closed three times. The perpetrators continue to work at the same police station.<sup>2</sup>


**Nazomiddin Khomidov** died in custody after he was detained by police in **Tajikistan** in March 2014. A forensic examination concluded that the cause of death was suffocation resulting from hanging himself. Video footage of the examination revealed bruises on his body including in the area of his ribs. The authorities did not conduct an effective investigation into the circumstances of his death and it remains unclear why he allegedly committed suicide and why his corpse showed injuries.

**Maksat Suranaliev, Ulan Bokachiev** and **Kanat Kadyrov** were reportedly tortured at a police station in **Kyrgyzstan's** capital Bishkek in May 2014 to force them to confess to a murder that they insist they did not commit. The torture allegedly included electric shocks, suffocation, a mock execution and severe hitting and beating. A medical doctor of the NGO Voice of Freedom, who visited the three men together with Kyrgyzstan's National Preventive Mechanism, recorded fractures, injuries, bruises and a concussion. A forensic examination ordered by the Prosecutor General's Office in January 2015 has yet to issue a conclusion and, to our knowledge, in the meantime, the Prosecutor General's Office has taken no further steps to investigate the allegations.

The NGO coalitions against torture in Kazakhstan, Kyrgyzstan and Tajikistan are aware of many cases in recent years where perpetrators of torture or other law enforcement officers threatened victims with further violence or other reprisals when they wanted to lodge complaints about torture or other forms of

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<sup>2</sup> For further information on this case, refer to:

[www.iphronline.org/uploads/9/0/2/7/9027585/open\\_letter\\_to\\_prosecutor\\_general\\_of\\_kazakhstan\\_june\\_2015.pdf](http://www.iphronline.org/uploads/9/0/2/7/9027585/open_letter_to_prosecutor_general_of_kazakhstan_june_2015.pdf)

ill-treatment. Many decided not to complain out of fear for their own or their family's safety or they withdrew their complaints at a later stage.

In all three countries judges at remand hearings typically do not ask detainees how they were treated in custody. Even when injuries are clearly visible or when detainees make allegations of torture or ill-treatment during remand hearings, judges usually do not request an investigation into the allegations. Prosecutors almost never open investigations into torture or other ill-treatment as part of their supervisory function over the criminal investigation process. As a result, investigations are usually only instigated when victims, lawyers, local and international human rights organizations or media exert pressure on the authorities.

In those cases where investigations have been opened in recent years they have not been conducted effectively in the large majority of cases. Typically, investigators failed to engage in gathering evidence to study the circumstances of the alleged torture from all perspectives, such as interviewing witnesses and medical personnel or ordering a forensic medical examination; they did not interview the victims and they did not carry out confrontations of police and victims. Instead, investigators often relied on statements obtained from the alleged perpetrators and their colleagues.

In Kazakhstan, Kyrgyzstan and Tajikistan there are structural problems that stand in the way of prompt, thorough, impartial and independent investigations as required by international human rights law.

The examination of torture allegations is in many cases conducted by the internal security service of the Ministry of Internal Affairs or other law enforcement agencies whose employees are themselves implicated in the complaint. These internal security services usually dismiss the allegations as unfounded and, as a result, criminal cases are opened only in a small number of cases.

In Kyrgyzstan and Tajikistan, when complaints are submitted to prosecutors' offices, prosecutors lead the investigation. In Kazakhstan prosecutors often forward complaints to the internal security services of law enforcement agencies for them to conduct the investigation.

When investigations are led by prosecutors they are also often not conducted effectively. Prosecutors, like the police, have an interest in reducing and resolving crime. In order to achieve this goal prosecutors may be inclined to overlook human rights violations committed by police, such as torture. Prosecutors and policemen from the same regions frequently have close professional and sometimes even personal links, which often poses an obstacle to thorough and impartial investigations into violations committed by police. In addition, domestic legislation in all three countries permits prosecutors to order police to undertake investigative activities and gather evidence for them.

In those cases where torture or other ill-treatment are revealed during court hearings prosecutors have an inherent conflict of interest. The law envisages that prosecutors carry out both the function of criminal prosecution and that of supervision over the legality of the investigative process. Within the function of criminal prosecution, the prosecutor presents indictments in courts that are frequently based on information provided by police or other law enforcement agencies. By revealing violations (including torture) that took place during their investigative activities, the prosecutor undermines the legitimacy of the collected evidence and weakens the arguments presented in the indictment.

When Tajikistan, Kyrgyzstan and Kazakhstan were last reviewed by the United Nations Committee against Torture in 2012, 2013 and 2014, respectively, the Committee recommended each of them that they establish independent bodies to conduct investigations into allegations of torture and other ill-treatment.

## **RECOMMENDATIONS**

Ensuring that allegations of torture and ill-treatment are investigated promptly, thoroughly, impartially and independently is crucial to eradicate torture and end impunity.

### **Therefore we urge the authorities of Kazakhstan, Kyrgyzstan and Tajikistan to:**

- Promptly act on all complaints involving allegations of torture and ill-treatment by initiating thorough, impartial and independent investigations.
- Oblige judges at remand hearings to routinely ask detainees arriving from police custody how they were treated and to order an investigation should there be any reason to suspect that they may have been subjected to torture or other ill-treatment.

- Create and fund an independent body endowed with sufficient authority and competence to conduct prompt, thorough, impartial and independent investigations into all allegations of torture and other forms of ill-treatment.
- Ensure that complainants, their families and civil society activists are protected against any reprisals as a consequence of their complaint, and that law enforcement officers are subjected to appropriate disciplinary or, where relevant, criminal measures for such actions.
- Suspend any law enforcement officer who is under investigation for having committed acts of torture or ill-treatment, for the duration of the investigation.
- Train prosecutors in the effective conduct of investigations.