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## THE CASES OF KHUSHVAKHT KAYUMOV, SHAKHBOL MIRZOEV AND SHAMSIDDIN ZAYDULLOEV

### **Prison sentence of policeman who tortured 17-year old Khushvakht Kayumov reduced under prisoner amnesty**

On 27 April 2012, Mashraf Aliev, then officer of Yavan district police in the southern Khatlon region, summoned Khushvakht Kayumov from the village of Kulobod to the district police station, where he beat and kicked the young man and threatened to torture him with electric shock unless he confessed to a theft. Khushvakht Kayumov insisted he was innocent. Mashraf Aliev let him go home in the evening, but demanded that he return the next day. On 28 April, the beatings continued and Khushvakht Kayumov eventually signed a “confession” in order to avoid further abuse. Mashraf Aliev threatened that Khushvakht Kayumov would be beaten by 200 policemen if he later retracted his confession. Devastated by the experience of abuse, Khushvakht Kayumov decided to commit suicide. On 29 April, his relatives found him hanging from the ceiling of the family’s barn in an unconscious state. They were able to save his life by quickly arranging for him to be taken to the local hospital.

On 30 April 2012, the Prosecutor’s Office of Yavan district opened a criminal case against Mashraf Aliev for “torture” (Article 143-1, part 2 of the Criminal Code of Tajikistan) and “exceeding official responsibility” (Article 316, part 1 of the Criminal Code). On 7 September 2012, Yavan district court found the officer guilty of committing these crimes and sentenced him to seven years’ imprisonment.

On the initiative of the Chairman of the Supreme Court of Tajikistan, the case was sent for additional investigation on 19 February 2013. On 11 December 2013, Kurgan Tyube city court found Mashraf Aliev guilty of the crime of “torture” under Article 143-1, part 3 of the Criminal Code of Tajikistan, which punishes torture that has severe consequences including to a person’s health. It sentenced Mashraf Aliev to seven years’ imprisonment, to be served in a strict prison colony (in Russian: колония усиленного режима).

In October 2014, a claim for 300,000 Somoni (approx. 43,500 EUR) was lodged against the Ministry of Internal Affairs of Tajikistan to compensate for moral damages suffered by Khushvakht Kayumov as a result of torture. Ismoili Somoni district court in Dushanbe is currently considering the civil case.

The Coalition against Torture in Tajikistan recently learnt that Mashraf Aliev’s prison sentence was reduced to three years in early 2015 as a result of applying amnesty laws and on 30 April 2015, Sino district court in Dushanbe ordered that he be transferred to a settlement colony (in Russian: колония-поселение), a less strict type of colony than where he was held before. to serve the rest of his sentence. In practice, however, he was released early for good conduct, lives at home and reports to the authorities once a week.

### **Key recommendations:**

- Express concern that the seven-year prison sentence of police officer Mashraf Aliev, who was convicted in 2013 for torturing Khushvakht Kayumov from the village of Kulobod in Khatlon region, was reduced to three years in 2015.

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- Highlight that the United Nations Committee against Torture recommended Tajikistan to “ensure that the Law on Amnesty contain clear provisions stipulating that no person convicted for the crime of torture will be entitled to benefit from amnesties, and that such prohibition is strictly complied with in practice” (Paragraph 7) and urge the authorities to implement this recommendation as a matter of priority.
- Seek assurances that Khushvakht Kayumov will receive adequate compensation for harm suffered as a result of torture and other forms of ill-treatment.
- Tajikistan should also ensure, in line with Paragraph 21 of the November 2012 Concluding Observations of the Committee against Torture, “that there are clear provisions in the domestic legislation on the right of torture victims to redress, including fair and adequate compensation and rehabilitation for damages caused by torture”.

**Torture compensation given to Shakhbol Mirzoev not commensurate with the harm suffered**

Shakhbol Mirzoev, who voluntarily enrolled for service in the Border Guards of Tajikistan in October 2013 after having finished his Commercial Law studies, was subjected to torture by medical and military personnel serving at a border guards unit, on 6 March 2014. Usmon Gayratov, a serviceman and medical attendant, harassed and attempted to humiliate the 22-year old Shakhbol. When the young man ignored the provocation, the medical attendant grabbed and threw him on his back on the floor. As a result of the fall, he suddenly lost all sensation in his extremities. When others noticed that Shakhbol Mirzoev was not moving they lifted him up three times, tried to stand him up on his feet, but the young man fell down and hit his head on the floor. Then soldiers reportedly cut the soles of his feet with razor blades, pricked different parts of his body with needles, and poured boiling water over his back. When they understood that Shakhbol Mirzoev was really unable to feel his extremities, they left him alone in the clinic.

Doctors of the National Medical Centre later diagnosed him with a fracture to the fifth spinal disk, damage to various organs, and the loss of sensitivity in his arms and legs. Shakhbol Mirzoev had to be flown to Moscow because there are no specialists in Tajikistan for the operation he required. In order to cover the expenses, his family sold their house. Although the administration of the Border Guards of Tajikistan promised to cover all medical expenses, it only covered expenses incurred during his hospitalization at the National Medical Center in Tajikistan. Shakhbol Mirzoev is now seriously disabled. He is able to sit in a wheel chair a maximum of two hours per day. The rest of the time he has to lie down.



Shakhbol Mirzoev was tortured by military and medical personnel at a Border Guards unit in March 2014. As a result, he is able to sit in a wheel chair a maximum of two hours per day. The rest of the time he has to lie down.

On 19 June 2014, the Military Court of Dushanbe sentenced Usmon Gayratov to nine years’ imprisonment for “violating the code of military conduct” (Article 373, part 2 of the Criminal Code of Tajikistan) and “leaving somebody in a dangerous situation” (Article 127, part 1) and ordered him to pay 570,000 Somoni (approx. 83,000 EUR) to cover expenses incurred by the Administration of Border Guards for Shakhbol Mirzoev’s medical treatment. It also sentenced Gulrukhsor Shirinova, a servicewoman and medical attendant, to 18 months’ corrective labour for “negligent attitude to service” (Article 392 of the Criminal Code) and “violating the code of military conduct” (Article 373). Additionally, it ordered that she pay 15 per cent of her salary to the government. Gulrukhsor Shirinova was scheduled to be on duty in the medical unit the day Shakhbol Mirzoev was tortured, but she left the premises and put Usmon Gayratov in charge of the unit although she was aware that Shakhbol Mirzoev was not safe.

The authorities did not conduct a thorough, impartial and independent investigation into whether the commanding officer of the Border Guards unit committed the crime of “negligence” by not preventing the torture of Shakhbol Mirzoev.

In November 2014, Shakhbol Mirzoev applied to the Military Court of Dushanbe seeking compensation for material and moral damages. On 25 May 2015, the Court decided to award Shakhbol Mirzoev 97,265 Somoni (approx. 14,200 EUR) for material damages and 20,000 Somoni (approx. 2,900 EUR) for moral damages. We believe that the amount of damages granted to Shakhbol Mirzoev for moral harm is incommensurate with the harm suffered and is not in line with Tajikistan's obligations under international human rights law. Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that "(e)ach State Party shall ensure in its legal system that the victim of an act of torture (...) has an enforceable right to fair and adequate compensation".

**Key recommendations:**

- Express concern that the amount of compensation granted to Shakhbol Mirzoev by the Military Court of Dushanbe on 25 May 2015 for moral damages resulting from torture appears to be incommensurate with the harm suffered and is neither fair nor adequate.
- Express concern that the authorities have not provided Shakhbol Mirzoev with the means for the fullest rehabilitation possible.
- Highlight that the United Nations Special Rapporteur on torture urged the authorities of Tajikistan in his February 2015 follow-up report to his mission to Tajikistan to "ensure that victims obtain redress and fair and adequate compensation, including the means for the fullest rehabilitation possible" (Paragraph 43). Seek assurances that this recommendation is implemented as a matter of priority.
- Express concern that the authorities did not conduct a thorough, impartial and independent investigation into whether the commanding officer of the Border Guards unit committed the crime of "negligence" by not preventing the torture of Shakhbol Mirzoev.

**Twenty-five-year old Shamsiddin Zaydullov died in police custody in suspicious circumstances in April 2015**

Shamsiddin Zaydullov's mother told the Coalition against Torture in Tajikistan that in the evening of 8 April 2015, as his son was waiting in his car outside a shop in the Sino district of Dushanbe, three or four men in plainclothes suddenly opened the doors of his car, grabbed and handcuffed him without an explanation and beat him. When several of his neighbours and a passer-by peacefully intervened, the men detached the handcuffs and left. Later that evening, however, officers of the Drug Control Agency of Tajikistan came to the family's flat and detained him accusing him on drug-related crime. Reportedly, they did not present an arrest warrant and took him to the building of the Drug Control Agency. Among the detaining officers were the same men who had been in plainclothes earlier that evening and had abused Shamsiddin in his car.

On 9 April, Shamsiddin Zaydullov's mother visited him in the building of the Drug Control Agency. She recalled: "When I patted his head he said I shouldn't touch the back of his head because it was swollen and painful. I asked him in a low voice whether he was beaten and he nodded." When she wanted to visit her son again on 10 and on 11 April she was not given access under various pretexts. In the evening of 11 April Shamsiddin Zaydullov reported to have received a phone call from the investigator's telephone. First Shamsiddin Zaydullov told her that the remand hearing had taken place that day, that he was charged with "selling small quantities of drugs" (Article 200, part 1 of the Criminal Code of Tajikistan) and that he needed a lawyer. Then the investigator took the receiver and confirmed the information.

Shamsiddin Zaydullov's mother hired a lawyer (who does not work for the Coalition against Torture). When the two wanted to visit the young man in custody on 12 April they were unable to reach the investigator on the phone, after which they decided to try visiting him again the next day. In Tajikistan lawyers are often only given access to their clients in police custody when the investigator permits them to do so.

Early on 13 April, a neighbour of Shamsiddin Zaydullov's parents told them that Shamsiddin Zaydullov was dead. The neighbour had received the information from an official of the Drug Control Agency. The parents later told the Coalition against Torture that when they saw his body in the morgue it was covered in bruises and they provided the Coalition with several photographs as evidence. The same day the parents petitioned for a forensic medical examination to be conducted.

Shamsiddin Zaydullov's parents hired a lawyer who cooperates with the Coalition against Torture because they wanted expert legal assistance in their struggle for justice. On 16 April 2015, the parents

lodged a complaint with the Prosecutor General's Office of Tajikistan and urged to conduct an effective investigation into their son's death. On 25 April, the General Prosecutor's Office opened criminal proceedings under Article 143-1 of the Criminal Code ("torture").

On 13 May, the parents and the lawyer were given access to the results of the forensic medical examination that was conducted after the autopsy. The forensic medical expert concluded the cause of death was pneumonia. The same day the lawyer petitioned the Prosecutor General's Office for a new forensic medical examination and on 14 May the Prosecutor General's Office ordered that an interdisciplinary forensic medical examination be conducted. The exhumation was scheduled to take place on 27 May and the lawyer and Shamsiddin Zaydullov's parents are waiting for the results.

**Key recommendations:**

- Seek assurances that the investigation into the circumstances of Shamsiddin Zaydullov's death is conducted thoroughly, impartially and independently.
- Seek assurances that anyone suspected to be responsible of causing Shamsiddin Zaydullov's death is brought to justice without delay.