



## OSCE Human Dimension Implementation Meeting

### Torture and ill-treatment in Kazakhstan, Kyrgyzstan and Tajikistan (23 September 2016)

Torture and ill-treatment including the use of electric shock, suffocation, rape and beatings continue to be reported from Kazakhstan, Kyrgyzstan and Tajikistan. Since January 2016 the three Central Asian NGO Coalitions against Torture registered 115 new cases in Kazakhstan, 86 in Kyrgyzstan and 60 cases in Tajikistan. It is believed that these figures reflect only the tip of the iceberg since many victims of torture and their relatives refrain from lodging complaints for fear of reprisals or because they do not believe that they will attain justice.

At the same time, each of the three Central Asian countries has taken some steps in the right direction in recent years. For example, Kazakhstan and Kyrgyzstan ratified the Optional Protocol to the Convention Against Torture (OPCAT) and set up national preventive mechanisms (NPMs); Kazakhstan and Tajikistan passed legislation strengthening safeguards against torture in detention; the Ministries of Health in Kyrgyzstan and Tajikistan obliged medical personnel to examine detainees in line with the standards of the United Nations (UN) Istanbul Protocol; and several victims of torture or their bereaved families received compensation payments for moral damages sustained through torture following rulings by civil courts in Kazakhstan and Tajikistan.

We believe that Kazakhstan, Kyrgyzstan and Tajikistan should adopt regional best practice in order to progress in the struggle against torture. In addition, the Coalitions against Torture have identified three further areas of concern that the authorities should address as a matter of urgency:

#### 1) Amnesty laws

Kazakhstan's Criminal Code that came into force in 2015 excluded those charged or convicted of "torture" (Article 146 of the Criminal Code) from benefitting from amnesties, which is a positive step. However, perpetrators of torture or other ill-treatment are often not charged under Article 146 but other articles of the Criminal Code such as "exceeding authority or abuse of power" (Article 362) and are thus not excluded from amnesties.

The Criminal Codes of Kyrgyzstan and Tajikistan do not exclude perpetrators of torture from benefitting from amnesties: each amnesty law provides a list of allegable criminal offences.



The NGO Coalition against Torture in Tajikistan is aware of many cases in recent years where perpetrators of torture or other forms of ill-treatment were released from prison following such amnesties or where they had their sentences reduced. The recent amnesty issued in August 2016 in connection with the 25th anniversary of Tajikistan's independence was the first amnesty in Tajikistan that explicitly stated that those convicted of "torture" (Article 143-1 of the Criminal Code) were excluded from the amnesty. However, since in Tajikistan many perpetrators of torture and other ill-treatment are convicted under other articles of the Criminal Code many had their sentences reduced under the August 2016 amnesty. The NGO Coalition against Torture in Tajikistan is aware of 25 people convicted of torture or ill-treatment in the army or their superiors who benefitted from the most recent amnesty.

In March 2014 military conscript Shakhbol Mirzoev was beaten so severely by Usmon Gayratov, a serviceman and medical attendant of the Border Guards Unit where the young man served, that Shakhbol was left paralysed. In June 2014 the Military Court of Dushanbe Garrison convicted Usmon Gayratov of "violating the code of military conduct" (Article 373, part 2) and sentenced him to nine years' imprisonment. Thanks to the application of two amnesties, in October and in August 2016, he has less than three years left to serve in prison.

## 2) Failure to conduct effective investigations

Kazakhstan, Kyrgyzstan and Tajikistan lack independent mechanisms to conduct prompt, thorough, impartial and effective investigations into allegations of torture and ill-treatment. When Kazakhstan (in 2014), Kyrgyzstan (2013) and Tajikistan (2012) were last reviewed by the UN Committee against Torture, the Committee recommended that they all establish such independent investigatory mechanisms.

In Kyrgyzstan and Tajikistan, when complaints are filed with the Ministry of Internal Affairs or other law enforcement agencies, they are usually sent for preliminary checking to the internal security services of the same institution that is implicated in the complaint. In practice, such checks are highly superficial and typically consist of interviews with the alleged perpetrators only. Bodily injuries, if documented, are usually ascribed to accidents or natural causes. As a result, the allegations are frequently found to be unsubstantiated and not meriting full investigation.

In Kazakhstan the new Criminal Procedure Code (CPC) that came into force in January 2015 stipulates that reporting a crime – of torture or other – should trigger an immediate investigation, not just a preliminary checking. However, in practice cases are only forwarded for investigation once they are registered in the Unified Register of Pre-Trial Investigations and we are aware of many cases involving allegations of torture and ill-treatment where law enforcement duty officers have refused to record complaints in the Register. Officers often use a provision contained in the CPC that allows law enforcers to subject the information contained in crime reports to preliminary checks if the information lacks clarity and detail, which is often the case with statements of torture. The checking is routinely carried out by the same body whose staff are implicated in the complaint of torture.

When prosecutors lead investigations into allegations of torture the investigations are also often not conducted effectively. Prosecutors and policemen from the same regions often have close professional and sometimes even personal links, which often pose an obstacle to thorough and impartial

investigations into violations committed by police. In many cases prosecutors task police with carrying out investigative activities, a practice that raises serious concerns about the independence of the investigation. Investigators often fail to engage in gathering evidence about the circumstances of the alleged torture from all involved parties, such as interviewing witnesses and medical personnel or ordering a forensic medical examination; they do not interview the victims nor do they carry out cross questioning of the police officers allegedly responsible in the presence of victims. Instead, investigators often simply rely on statements obtained from the alleged perpetrators and their colleagues.

We are also concerned that the existing investigation mechanisms lack accountability and transparency. When investigators close a criminal investigation victims and their lawyers usually do not have access to the case materials and sometimes they are not even informed that the case has been dismissed.

Prosecutors, like the police, have a vested interest in achieving a high rate of crime resolution. In order to achieve this goal, prosecutors may be inclined to overlook human rights violations committed by police, such as torture. 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 and other ill-treatment) that took place during their investigative activities, the prosecutor undermines the legitimacy of the collected evidence and weakens the arguments presented in the indictment.

**Rasim Bayramov** was tortured by police in the northern Kostanay region of Kazakhstan in July 2008. He and his mother submitted complaints to local police and prosecution authorities, but no full investigation was conducted and prosecutors dismissed the case for “lack of evidence of a crime” without giving further details about how they had reached this conclusion. After the UN Committee against Torture ruled in 2014 that Rasim Bayramov’s treatment at the hands of police amounted to torture and that an effective investigation should be conducted in order to bring the perpetrators to justice, investigative activities were conducted but the case was subsequently closed several times for “lack of evidence of a crime” and for establishing “no element of crime in the actions” of the police. The NGO Coalition against Torture in Kazakhstan is concerned that the investigations lacked effectiveness and did not, for example, address the conclusions of a psychiatric examination that had been conducted in line with the standards of the Istanbul Protocol. The examination found that Bayramov’s allegations fully corresponded with and were supported by the psychological evidence found during the examination. In February 2016 Rasim Bayramov, aged 33, tragically died of complications resulting from an illness he contracted in prison. In July the investigation into the allegations of torture was closed and the prosecutor’s office has turned down the lawyer’s request to recognize Bayramov’s mother as a party in the case. As a result, it is now impossible to appeal the July 2016 decision on closing the investigation.

In August 2015 **Umar Bobojonov**, aged 23, died shortly after he was taken into custody by police in the city of Vahdat, some 20 kilometers east of Tajikistan’s capital Dushanbe. At the local police station police officers

reportedly beat and kicked him and one officer kicked Umar's head so severely that he hit the wall with the back of his head and dropped to the ground unconscious. Two eye-witnesses confirm that police officers abused him. An ambulance took Umar to Vahdat City Hospital, where medical personnel assessed his situation as "very serious" and took him for reanimation, but he remained in a coma until he died on 4 September.

On 1 September 2015 the Vahdat Prosecutor's Office opened a criminal case for "unintentionally inflicting serious bodily harm" (Article 110, part 1 of the Criminal Code). On 4 September the forensic medical examination conducted by experts of the Vahdat branch of the State Forensic Medical Institute concluded that Umar Bobojonov died of head injuries. On 5 September the charge was changed to "inflicting serious bodily harm resulting in death" (Article 110, part 3 of the Criminal Code).

We are concerned about shortcomings in the way the Vahdat Prosecutor's Office has conducted the investigation and the lack of transparency of the process. For example, the prosecutor in charge of the case has on many occasions responded to petitions by the lawyer representing Umar Bobojonov's family with a significant delay and the lawyer was only given access to case materials that he is entitled to view by law after complaining to the Prosecutor General's Office in December 2015. Crucial investigative activities that should be conducted promptly, such as the confrontation of the alleged perpetrators and the witnesses, took place only over four months into the investigation. On 25 June 2016 the lawyer was informed that the Vahdat Prosecutor's Office had closed the preliminary investigation four months earlier because investigators had been unable to establish the suspected perpetrator/s.

### 3) Compensation for moral damages

Over the past ten years the Central Asian Coalitions against Torture have pushed for progress in facilitating access to reparation for victims of torture and their families. In recent years, six victims or their bereaved families have received compensation payments for moral damages sustained through torture in both Tajikistan and in Kazakhstan. While these are important precedents we are concerned that the amounts of compensation were neither fair nor adequate.

**Firdavs Rakhmatov** died after being subjected to torture by fellow-soldiers of the Ground Forces of Tajikistan's army in June 2015. His father reported that Firdavs had previously suffered abuse but had not complained for fear of reprisals. On 5 August 2016 the Military Court of Dushanbe Garrison granted the bereaved family compensation for moral damages of only 5 000 Somoni, the equivalent of approx. 560 EUR.

For example, **Shakhbol Mirzoev**, who was tortured so severely when he served in the army of Tajikistan that he was left paralyzed, was granted an equivalent of 2,900 EUR by the Military Court of Dushanbe Garrison in May 2015 for moral damages. The decision was later cancelled and the case is now pending review with a military court. Although the authorities promised to cover all medical expenses, in practice they only covered some and Shakhbol's family had to sell their house to pay for the other medical expenses.

In Kazakhstan in 2014, police in the city of Karaganda tortured **Nikolay Sinyavin** so severely (including by pulling out a fingernail, forcing a car key underneath his toenail and raping him with a truncheon) that he sustained a brain injury that caused the onset of epilepsy. In March 2016 Karaganda Regional Court awarded

him a meager 1 000 000 Tenge (approx. 2 600 EUR) in compensation - the lawyer had asked for three times as much.

While courts in Kyrgyzstan have also ruled in favour of providing compensation to victims in several cases, to date none of the victims has actually received any payment. This includes several cases involving victims of torture from Kyrgyzstan where the UN Human Rights Committee decided under its individual complaints procedure that compensation should be provided. In Kyrgyzstan – contrary to the country's obligations under international human rights law – domestic legislation does not require the state, but the perpetrators, to provide compensation for torture.

In June 2011 **Aleksey Naletkin** was reportedly beaten so severely by police in the temporary detention facility of the town of Tokmok in the Chuy region of Kyrgyzstan that he lost consciousness and had to be hospitalized. In April 2014 the Collegium of Bishkek City Court found two police officers guilty of “exceeding authority using violence”, and sentenced them to a fine and ruled that they are prohibited to occupy government positions for three years. On 26 December 2014 a civil court ruled that Aleksey Naletkin be awarded compensation for material and moral damages he sustained through the police abuse, but despite several complaints he has not yet received the compensation for moral damages.

### **Recommendations:**

We call on the authorities of Kazakhstan, Kyrgyzstan and Tajikistan to implement all recommendations issued to these countries by relevant UN treaty bodies and procedures. Recommendations to each of the three Central Asian countries that should be implemented as a matter of priority include:

#### Kazakhstan:

- Should ensure that all detainees have access to the legal safeguards enshrined in the law as of the moment of apprehension;
- ensure that all suspected perpetrators of torture and other forms of ill-treatment are charged under Article 146 of the Criminal Code;
- oblige medical personnel examining detainees to adhere to the standards of the Istanbul Protocol;
- ensure that investigations into all allegations of torture and ill-treatment are conducted promptly, thoroughly, impartially and independently;
- and ensure that victims of torture or their bereaved families receive fair and adequate amounts of compensation.

#### Kyrgyzstan:

- Should amend its legislation aimed at providing access to fundamental legal safeguards in detention upon apprehension;
- amend its legislation to exclude perpetrators of torture and all other forms of ill-treatment from benefitting from amnesties;
- create and fund an independent mechanism endowed with sufficient authority and competence to conduct prompt, thorough and impartial investigations into all allegations of torture and other forms of ill-treatment;
- fully implement all decisions issued to Kyrgyzstan under the UN Human Rights Committee's individual complaints procedure;
- and oblige the state to provide funds to compensate victims of torture/ill-treatment or their bereaved families for moral damages.

#### Tajikistan:

- Should ensure that all detainees have access to the legal safeguards enshrined in the law as of the moment of apprehension;
- provide expert human rights groups with unlimited and unannounced access to detention facilities for the purpose of monitoring;
- ratify the Optional Protocol to the Convention Against Torture and set up a National Preventive Mechanism;
- amend legislation to exclude perpetrators of torture and all other forms of ill-treatment from benefitting from amnesties;
- legislate that all investigative activities into allegations and complaints about torture and other forms of ill-treatment are carried out by prosecutors and that the investigations are conducted promptly, thoroughly and impartially;
- and ensure that victims of torture or their bereaved families receive fair and adequate amounts of compensation.