

AMNESTY INTERNATIONAL
Statement for Working Session 5: Rule of Law II (Right to a fair trial)

Uzbekistan - Failure to exclude evidence elicited as a result of torture or other ill-treatment

Amnesty International is concerned that security forces in Uzbekistan continue to use torture and other ill-treatment specifically to extract confessions and other incriminating information and more generally to intimidate and punish detainees, including human rights defenders, individuals perceived to be political opponents or who have fallen out of favour with the authorities, and those suspected to be members or sympathisers of Islamic movements or Islamist groups and parties.

The courts continue to heavily rely on these so-called "confessions" extracted under torture, duress or deception.¹ Too often judges are willing to ignore - or dismiss as unfounded - allegations of torture or other ill-treatment, even when presented with credible evidence in court, despite relevant Articles in the Criminal Procedural Code (CPC) and directives by the Plenum of the Supreme Court of Uzbekistan explicitly prohibiting the use of torture to extract confessions and the admissibility of such tainted evidence in court proceedings.² Such directives have been issued twice in the last decade, but have had virtually no effect. They would need to be released again to remind all relevant law enforcement and judicial officials of their obligations not to use torture or other ill-treatment or accept evidence based on confessions extracted under torture. However, Amnesty International believes that because these directives are not legally binding it is time for the authorities to take immediate steps to incorporate these directives into the CPC to make the prohibitions part of domestic criminal law and legally binding. The authorities should also take further steps to ensure that these provisions are consistently implemented.

Article 95 of the CPC makes it mandatory for law enforcement officers and judicial officials to consider the relevance, admissibility and credibility of evidence before placing reliance on it; this includes the requirement of Article 88 that testimony is not obtained "by violence, threats, [...] or other illegal acts".

A judge may also order a forensic investigation, including to establish the nature and seriousness of physical injury of the accused, should they decide that evidence was obtained in breach of CPC provisions, the results of which might trigger a criminal case against those security officers accused or suspected of having extracted confessions under duress. This possibility is not set out explicitly in

¹ 28 October 2013, Amnesty International, *Uzbekistan: Submission to the United Nations Committee against Torture*, EUR 62/011/2013, <http://www.amnesty.org/en/library/info/EUR62/011/2013/en>.

² Two Resolutions by the Plenum of the Supreme Court were adopted in December 2003 (Resolution № 17, 19 December 2003) and September 2004 (Resolution № 12, 24 September 2004). According to part 18 of Resolution № 17 of 2003 "On Practical Application by Courts of Laws ensuring the suspects and defendants the right to defense", "In compliance with law (Articles 17, 88 of the CPC) the inquirer, investigator, procurator, court (judge) have no right to humiliate the honor and dignity of the suspect, accused. Protection of the rights and legal interests of citizens should be ensured in collecting, checking and assessment of evidence. It is prohibited to apply torture, force, and any other brutal treatment humiliating human dignity in the process of collecting, checking and assessment of evidence".

Part 19 says, "Evidence obtained with the application of torture, force [harassment], threats, cheating, other severe treatment humiliating human dignity, other illegal measures, as well as with the violation of the right of the suspect, accused for defense, cannot be laid down as the basis for accusation. Inquirer, investigator, procurator, court (judge) are obliged to always ask persons delivered from detention about ways of treatment in the course of carrying out the inquest or investigation, as well as about conditions in custody. A thorough examination of pleaded arguments has to be conducted on each fact of application of torture in the course of inquest or investigation, including through carrying out forensic medical attestation [certification], and undertake both procedural and such other measures of legal nature on their results, right up to initiating a criminal case in regard to official persons".
http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/UZ/VERITAS_UZB_UPR_S3_2008_LegalandInstitutionalFramework_Appendix1.pdf

the CPC, but does follow from the more general Article 172 which refers to the requirement for expert examination, including forensic investigation, when it is relevant to the circumstances of the case.³

Article 173 of the CPC makes a forensic medical examination mandatory in cases where physical injuries are clearly visible to the judge.⁴ However, in practice, judges rarely exercise their right to order mandatory forensic medical investigations, as the example below demonstrates.

Erkin Musaev, a former Ministry of Defence official, was working for the UN Development Programme (UNDP) in Uzbekistan when he was detained in January 2006. He was sentenced to a total of 20 years' imprisonment on politically motivated charges of treason and abuse of office following three separate unfair trials in 2006 and 2007. His family claim that he was tortured to force him to confess. No effective investigation has taken place into allegations that he was tortured in detention despite numerous complaints submitted to the authorities by Erkin Musaev, his lawyer and his family. In March 2012 the UN Human Rights Committee concluded that Erkin Musaev's rights under Article 7 (prohibition of torture), Article 9 (right to liberty and security of person) and Article 14 (fair trial guarantees) of the International Covenant for Civil and Political Rights (ICCPR) had been violated.

Following his detention he was reportedly questioned for ten days by officers of the National Security Service (SNB), during which time he was denied the right to contact relatives and had no access to a lawyer. In addition, he was subjected to psychological intimidation when his interrogators told him he would be prosecuted for involvement with drug trafficking or with Islamist terrorist cells if he did not confess to espionage. Erkin has stated that this was followed by a month of day-time beatings, night-time interrogations, and threats against his family. Erkin Musaev has reported that following the beatings he was prevented from seeing his family until his bruises had healed. Due to the torture and ill-treatment he suffered Erkin Musaev eventually signed a confession on the proviso that the SNB would not harm his family. Nevertheless, he continued to be concerned for the safety of his wife and two children after seeing a warrant for the arrest of his wife while in the SNB detention centre

³ Article 172. Grounds for Expert Examination

Expert examination shall be ordered in cases, when circumstances relevant to the case may be established by an expert examination to be conducted by a person skilled in science, technology, arts, or crafts. Possession of the said skills by an inquiry officer, investigator, prosecutor, judge, expert witnesses, or attesting witness shall not dismiss the necessity of ordering expert examination.

The matters to be examined by a forensic examiner and his opinion may not exceed the limits of his skills.

Substitution of expert examination with research beyond the procedures prescribed by this Code shall be prohibited. Availability of conclusions of departmental visitations, acts of inspections, consultancies shall not dismiss the necessity of ordering expert examination.

⁴ Article 173. Mandatory Appointment and Conduct of Expert Examination

Appointment and conduction of an expert examination shall be mandatory to establish the following circumstances:

- cause of death, or nature and heaviness of bodily injury;
- fact of sexual intercourse, pregnancy, or abortion;
- age of a suspect, accused, defendant, and victim, in case of unavailability or unreliability of the certificates thereof;
- mental and physical condition of a suspect, accused, defendant, or the person being prosecuted for compulsory medical measures; their abilities to realize and direct own actions at the moment of commitment of a crime, as well as their ability to realize their criminal liability, give a testimony and protect own rights and legal interests independently during criminal proceedings;
- mental and physical condition of a victim and witness, and their abilities to apprehend, remember, and recall the facts relevant to the case at questioning, as well as ability of the victim to protect his rights and legal interests independently during criminal proceedings; [...]

Expert examinations shall also be mandatory for establishment of other circumstances, relevant to the case, which require special skills and have not been reliably established with other evidence.

Erkin Musaev was charged and convicted of spying for an unidentified NATO member state and of misusing UN funds. He was sentenced to prison terms of six, 15 and 20 years respectively after three separate unfair trials in June and July 2006 and in September 2007. All three courts admitted as evidence confessions obtained through torture, and dismissed complaints by Erkin Musaev and his lawyer that he was tortured in detention.

In a submission to the UN Human Rights Committee, Erkin Musaev's mother stated that, in his closing statement during the September 2007 trial (third trial), Erkin's lawyer reminded the court of evidence contained in court files which stated that his client had suffered a traumatic brain injury while in SNB custody and needed specialist medical treatment in a Tashkent hospital. Appeals against the sentences were turned down at all stages of the process and in October 2007 the Supreme Court of Uzbekistan confirmed the 20-year sentence.

In its March 2012 decision, *Musaev v Uzbekistan*, the UN Human Rights Committee found that "[...] [the] competent authorities did not give due and adequate consideration to [Erkin] Musaev's complaints of torture and forced confessions made both during the pre-trial investigation and in court."

The Committee concluded that his rights under Article 7 of the ICCPR had been violated and that the authorities in Uzbekistan were obliged to provide him with an effective remedy, including an impartial and effective investigation into his allegations of torture and ill-treatment in detention.

Amnesty International is also concerned that the CPC only explicitly mentions torture once, namely in Article 17: "Nobody may be subject to violence, torture, or other cruel or degrading treatment." In all other Articles, more general descriptive terms such as "illegal acts", "violence" and "threats" are used, allowing a broad scope for interpretation.

Amnesty International believes that it is essential that torture is mentioned explicitly in the CPC as exclusionary grounds for evidence in all the relevant Articles. This would reinforce the prohibition of torture as a means of extracting evidence and be in line with Uzbekistan's international obligations and commitments, including under its OSCE commitments.