

BRIEFING PAPER

Open Society Justice Initiative Recommendations to the OSCE Human Dimension Implementation Meeting

SEPTEMBER 2012

The Open Society Justice Initiative submits this document for consideration at the OSCE Human Dimension Implementation Meeting Working Session on the Rule of Law, with respect to the prevention of torture. In particular, the Justice Initiative recommends that the Office for Democratic Institutions and Human Rights of the OSCE urge the authorities of Kyrgyzstan to immediately release human rights defender Azimjan Askarov and undertake a series of measures to redress the torture and other violations he suffered, and to prevent future such violations.

Executive Summary

Azimjan Askarov was tortured in police detention and sentenced to life imprisonment after a sham trial. His case exemplifies the widespread torture and discrimination of both human rights defenders and people of Uzbek ethnic origin following the violence in southern Kyrgyzstan in June 2010, as well as the lack of accountability for perpetrators of the abuse. His release, the quashing of his conviction, and the prosecution and punishment of those who committed and failed to prevent the torture, should serve as a litmus test of the Kyrgyz government's commitment to accountability and human rights reforms. The OSCE Human Dimension Implementation Meeting provides an opportunity, during the Working Session on the Rule of Law, to discuss the actions Kyrgyzstan must undertake to meet its legal obligations to prevent and redress torture, both with respect to Mr. Askarov's case, and in general.

The Open Society Justice Initiative ("OSJI") promotes human rights and builds legal capacity for open societies through litigation, advocacy, research, and technical assistance. The Open Society Justice Initiative acts as a co-counsel in Mr. Askarov's communication to the United Nations Human Rights Committee. OSJI has submitted six cases to the United Nations Human Rights Committee and Committee against Torture on torture and death-in-custody issues. In addition to serving as co-counsel or third-party intervener, OSJI has trained dozens of lawyers from Central Asia to utilize litigation as a tool to challenge torture in domestic courts and international bodies, and provides technical assistance to national NGOs in filing complaints with the UN.

Recommendations

The Office for Democratic Institutions and Human Rights (ODIHR) assists participating OSCE States in implementing their human rights obligations through monitoring, capacity-building, and the development of practical resources.

The government of Kyrgyzstan is failing to meet its obligations to prevent and redress torture and other violations against human rights defenders and persons of ethnic Uzbek origin. As such, the ODIHR should:

- Monitor the situation for human rights defenders in Kyrgyzstan to ensure that they are able to undertake their activities to promote and protect human rights without fear of restrictions or violations.
- Urge Kyrgyzstan's authorities to immediately release Mr. Azimjan Askarov and provide redress through the following means:

- Quash his conviction, which followed a trial and appeal process that lacked basic safeguards and contravened international fair trial standards;
 - Provide a full medical examination and treatment to Mr. Askarov, which includes allowing him to travel abroad to obtain treatment for his injuries;
 - Create an independent commission of inquiry to investigate the circumstances of the detention and torture of Mr. Askarov, with the power to initiate criminal prosecution of those found to be the material and intellectual authors of the violations;
 - Pay just compensation for the torture and illegal detention of Mr. Askarov and providing for comprehensive rehabilitation.
- Recommend (and to the extent possible, provide technical assistance and capacity-building in support thereof) that Kyrgyzstan undertake the following measures to introduce specific safeguards and procedures to prevent similar violations from happening in the future, namely:
 - Registration of all detainees from the moment of detention;
 - Proper monitoring by prosecutors and a to-be-created National Preventive Mechanism as well as independent monitoring by NGOs of detention facilities to prevent and document violations;
 - Creation of an independent and secure complaints mechanism for allegations of torture;
 - Prompt transfer of suspects from police detention to independent detention facilities;
 - Timely, regular, and unimpeded private visits by family members and lawyers to those in detention;
 - Independent conduct and review of medical examinations, when requested by detainees or family members; and
 - The creation of an independent mechanism entrusted to investigate torture allegations in full accordance with international norms and domestic legislation;
 - The creation of an independent commission of inquiry to review all convictions related to the violence in southern Kyrgyzstan in June 2010 with full respect to the fair trial guarantees, and investigate all torture allegations, including those where the victims did not file formal complaints.

Factual Background

Mr. Azimjan Askarov is the director of the human rights organization *Vozdukh* (Air), based in southern Kyrgyzstan, and a well-known local human rights defender. For more than ten years, Mr. Askarov has focused on documenting prison conditions and police ill-treatment of detainees in Bazar-Korgon and other parts of the Jalal-Abad province. In 2001, Mr. Askarov was the first human rights defender in Kyrgyzstan to receive permission from state authorities to monitor places of detention. Since that time, he has been involved in documenting and publicising numerous instances of police abuse and misconduct as well as writing critical articles to that effect. His work has raised the ire of authorities and made him the target of the same kinds of abuses he has investigated and exposed.

In one renowned case in 2006, he defended two residents of Bazar-Korgon who had been accused of murder by producing as a witness the very woman that the police claimed had been murdered. One of the two defendants, also a woman, had previously confessed to the supposed murder, but only after being tortured by the police. In another example from 2005, he documented and publicised the police abuse of Ms. Zulhumor Tokhtonozarova and three other women. Ms. Tokhtonozarova, a 23-year old, was detained and held in pre-trial detention at the Bazar-Korgon police station for seven months. During that time, she was abused and raped by police officers, and sold by them as a sexual slave to other detainees. Mr. Askarov revealed this story to the public and complained to various state authorities on Ms. Tokhtonozarova's behalf. As a result of his reporting, Ms. Tokhtonozarova was released, two investigators were fired, and four police officers were criminally prosecuted.

In March 2011, the Czech human rights organization People in Need awarded Mr. Askarov the Homo Homini Award, based on his perseverance “despite threats, detention and imprisonment along with physical abuse” and “his long-term and dangerous work in human rights promotion.” In September 2012 the Committee to Protect Journalists awarded Mr. Askarov the CPJ International Press Freedom Award, an annual recognition of courageous reporting, for risking life and liberty to reveal abuses of power and human rights.

Detention, Torture and Trial of Azimjan Askarov

Mr. Askarov, an ethnic Uzbek, was detained on 15 June 2010 in the aftermath of ethnic violence in southern Kyrgyzstan. He was charged with numerous crimes including complicity in the murder of a police officer, illegal acquisition and storage of firearms and extremist materials, and organisation of mass disorder, and was detained at the same police station where the deceased officer had worked. At the station, he was humiliated and beaten. From the first moment of his detention, the police also humiliated him and referred to his human rights work with the statements, “*Now it is your turn to serve us,*” and “*Because of the articles criticizing us, we will get even with you. We will make you die slowly. Now we have the opportunity and the time to punish you.*” He was denied access to a lawyer and was repeatedly

interrogated as the police attempted to coerce him into testifying against leaders of the Uzbek community.

The beatings and interrogations continued the next day. At one point, he was repeatedly hit on the head with a pistol and forced to clean up his own blood. The police threatened to rape his wife and daughter in front of him. His detention was not registered for nearly 24 hours. On the third day of interrogation, the local prosecutor criticized the police for the fact that they still had not got the information that she said she needed. Later that day, on 17 June, the prosecutor filed criminal charges against Mr. Askarov. The court ordered his detention pending trial, and both the judge and prosecutor declared that his guilt was proven.

Mr. Askarov continued to be detained by the police in the deceased officer's police station for two months. During this time, he had no access to a lawyer until a colleague from a human rights NGO visited him a week after he was detained and realized that he was being tortured. Even once a prominent human rights lawyer from Bishkek, Nurbek Toktakunov, joined the defence team, the police and prosecutor initially refused to allow him to meet Mr. Askarov in private and withheld information necessary to prepare his defence. On several occasions, relatives of the dead police officer physically attacked Mr. Toktakunov on the grounds of the police station while the police and prosecutors refused to intervene. As an example of this repeated interference, the police terminated one of Mr. Toktakunov's only few private meetings with Mr. Askarov after ten minutes. Throughout the entirety of the investigation, which lasted nearly two months, they only had approximately two hours together to discuss the case.

Mr. Askarov's District Court trial, which commenced on 2 September 2010, was characterized by numerous violations of fair trial rights. Mr. Toktakunov was not able to participate in the first day of the trial because he was not notified of the hearing date until the evening of 1 September, by phone, and the trip to Nooken from Bishkek takes about 10 hours by car. Mr. Askarov and his lawyers argued that he was innocent, claiming that he had been at home when the policeman was killed and was innocent on other charges as well. The court did not permit Mr. Askarov's lawyers to present evidence that substantiated these claims.

Relatives of the deceased police officer constantly threatened and intimidated Mr. Askarov's defence team and his seven co-defendants and potential witnesses inside and outside the courtroom. The trial judge made no effort to protect defence counsel or maintain order in the courtroom. On the late afternoon after the first day of trial, 20 police officers from both Bazar-Korgon and Nooken police stations beat Mr. Askarov and his co-defendants in the backyard of the police station for several hours. Mr. Askarov and other defendants were handcuffed and unable to protect themselves. While they were being beaten, the officers told them they must remain quiet and only give "yes" and "no" answers at the court room. Later that evening, in a corridor of the police station, Mr. Askarov was beaten again by two police officers who held him down and repeatedly struck with a large bottle filled with water.

The atmosphere of intimidation in the courtroom prevented defence counsel from making any legal applications and from cross-examining prosecution witnesses or calling defence witnesses. Without considering any defence evidence, the District Court held the last hearing on 8 September, and on 15 September 2010 rendered a guilty verdict on all crimes charged and sentenced Mr. Askarov to life imprisonment.

During and after the trial, Mr. Askarov was held in the police station in Nooken where he was again subject to abuse. Similar violations characterized the appeal hearings. Prior to the hearings, after the transfer to Suzak police station, Mr. Askarov and his co-defendants were forced to remove their clothing and were beaten by police officers wearing black masks in the backyard of police station. Relatives of the deceased officer abused and threatened the defence lawyers, resulting in an inability to call and examine witnesses. On 10 November 2010, the Appeal Court upheld the decision of the District Court.

In the Supreme Court of the Kyrgyz Republic, defence lawyers were able to file for the first time the witness statements that substantiated Mr. Askarov's version of events and served as evidence of his innocence. It included 14 witness statements that Mr. Askarov was at home on June 10 when the policeman was killed. However, Mr. Askarov was not allowed to participate at this first potentially meaningful hearing of his case. The court argued that the law did not require Mr. Askarov to be present, but did not offer any other explanation of this refusal when Mr. Askarov's lawyer petitioned for his client to be brought to court. Despite accepting the applications of the defence and the witness statements, the Supreme Court apparently did not take this evidence into account. It did not refer to new witness statements in the decision at all, discarded all other arguments of the defence as "not corresponding to the case file," did not order any investigation into the torture allegations, and in December 2011, simply upheld the verdict and sentence of life imprisonment against Mr. Askarov.

In December 2011 and February 2012, a renowned U.S.-based medical specialist, Dr. Sondra Crosby, examined Mr. Askarov in the prison in Bishkek upon the request of the Open Society Justice Initiative and Physicians for Human Rights. In her report, Dr. Crosby confirmed that Mr. Askarov appears to have suffered severe and lasting physical injuries as a result of his arrest and incarceration. His injuries support his account of torture while in police custody. He needs immediate medical help for persistent visual loss, traumatic brain injury, and spinal injury. In addition, Mr. Askarov requires immediate evaluation for chest pain and shortness of breath, symptoms which are strongly suggestive of coronary artery disease and could be life threatening without immediate treatment. As of now, Mr. Askarov has not received adequate medical treatment. Even though his current condition was partly evaluated, he still is not provided medication for all his diseases.

With an appointment of the new deputy head of the state office of the execution of punishment, access to Mr. Askarov has become very limited. OSJI's efforts to undertake an independent health evaluation failed, as the doctor retained did not receive a permission to enter the prison facilities where Mr. Askarov is kept.

During and after Mr. Askarov's conviction, counsel filed several requests with the prosecutor's office to investigate the torture that Mr. Askarov was subjected to, but no criminal investigation took place. In denying the requests to investigate, the prosecutors repeatedly referred to a visit to Mr. Askarov while in police custody by a government commission, during which Mr. Askarov said – under pressure- that he had no complaints. To this day, the prosecutors continue to ignore all evidence provided by Mr. Askarov and his counsel about the torture he endured: detailed accounts of mistreatment that Mr. Askarov described in a video interview to the media and in writing in several legal documents; and medical records, including two evaluations by Dr. Crosby.

Violations of Kyrgyzstan's legal obligations under the International Covenant on Civil and Political Rights (ICCPR)

The treatment of Mr. Askarov violates numerous provisions of the ICCPR.

Torture, lack of safeguards against torture, failure to conduct an effective investigation and provide redress (Article 7, and Article 7 read in conjunction with Article 2(3))

Mr. Askarov was subjected to torture while in police custody in violation of the absolute prohibition against torture in both the ICCPR and the Constitution of Kyrgyzstan. Kyrgyz authorities also failed to prevent a number of administrative and procedural failings that facilitated the torture. In particular they failed to (1) promptly register his detention, (2) transfer him to a secure detention facility outside the police station, (3) provide prompt access to a lawyer, (4) allow medical examinations and (5) protect him from reprisals. The authorities also failed to conduct any meaningful investigation into the repeated torture of Mr. Askarov or to provide access to effective remedies, including compensation and rehabilitation. His health continues to deteriorate in detention as a consequence of the abuse he has suffered and he does not get adequate medical help.

Arbitrary and unlawful detention, discrimination (Articles 9, 2 and 26 of the ICCPR)

Mr. Askarov's detention did not comply with domestic legal procedure and was motivated by his role as a prominent human rights defender and an ethnic Uzbek. It was therefore unlawful and arbitrary, as well as in violation of the prohibition against discrimination.

Violation of pre-trial rights and rights to fair trial (Article 14 of the ICCPR)

Mr. Askarov was denied adequate time and facilities for the preparation of his defence, particularly the ability to communicate with counsel, and public officials violated the presumption of innocence by making statements portraying Mr. Askarov

as guilty. The lack of independence and impartiality in Mr. Askarov's trial and subsequent appeal process and the atmosphere of intimidation violated his right to a fair hearing. He was unable to effectively call or cross-examine witnesses, and was not allowed to be present - at the first potentially meaningful review of his conviction by the Kyrgyz Supreme Court.

Violation of rights as a human rights defender (Articles 9 and 19 of the ICCPR)

The authorities detained and tortured Mr. Askarov, and denied him a fair trial, in response to his work as a human rights defender reporting on police abuse.

Conclusion

The ODIHR assists participating States in meeting their human rights commitments. Human rights defenders play an essential role in promoting and protecting human rights throughout the OSCE region, but nonetheless face challenges in undertaking their work, including torture, unfair and arbitrary detention, and ill-treatment. ODIHR is well-positioned to work the government of Kyrgyzstan to urge both specific and general measures to prevent and redress torture.

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The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, Freetown, The Hague, London, Mexico City, New York, Paris, Phnom Penh, Santo Domingo, and Washington, D.C.