

**INTERNATIONAL  
HELSINKI  
FEDERATION FOR  
HUMAN RIGHTS**

*IHF Intervention to the 2006 OSCE Human Dimension Implementation Meeting*

**WORKING SESSION 9, RULE OF LAW II:**

**Independence of the Judiciary and the Right to a Fair Trial**

**Friday, 6 October 2006**

In the Central Asian OSCE region, **Turkmenistan** and **Uzbekistan** especially stand out as states where the rule of law is routinely violated, where no independent judiciary exists and where the right to a fair trial is unprotected. The inevitable consequence of such a condition is a lack of accountability also for human rights violations: the perpetrators – be they public officials or not – are almost never punished.

In **Uzbekistan**, almost a year and a half has passed since the Andijan massacre – an incident deemed by the IHF the worst human rights violation in 2005 in the OSCE region – where hundreds of unarmed demonstrators were killed by Uzbek troops and police after they began firing indiscriminately into a crowd of protestors, no accountability has been established: no Uzbek officials or soldiers are known, to date, to have been charged or brought to trial to account for the wrongful action.

While the government has denied all responsibility for the deaths and rejected calls for an independent investigation, it promptly carried out show-trials against individuals labeled “religious extremists”: by the end of January 2006, at least 230 people had been sentenced in seventeen trials<sup>1</sup> as the culprits behind the Andijan protests. The trials were held behind closed doors and once again revealed other persisting problems of the Uzbek judicial system: presumption of guilt rather than innocence; trumped-up charges and the planting of evidence; a total lack of independence and impartiality of the judges; violation of the right to competent legal counsel of one’s own choosing; and the use of torture and ill-treatment to force defendants to make self-incriminating statements. In the name of a “war on terror” and preventing the spread of Islamic fundamentalism, the Uzbek government has also threatened and leveled politically motivated charges against opposition representatives as well as human rights defenders<sup>2</sup> and journalists who have sought to investigate the events in Andijan.

The status of the rule of law and fair trial standards in **Turkmenistan** is well illustrated by the recent arrests and detention of three Turkmenistan Helsinki Foundation associates – Ogulsapar Muradova (also an RFE/RL correspondent) who died in prison in September,<sup>3</sup> Annakurban Amanklychev and Sapardurdy Khajiev. Amanklychev, for instance, was reportedly accused of

<sup>1</sup> Human Rights Watch, *The Andijan Massacre, One Year After, Still No Justice*, briefing paper, 11 May 2006, <http://hrw.org/backgrounder/eca/uzbekistan0506/>.

<sup>2</sup> See IHF intervention on human rights defenders, p. 30.

<sup>3</sup> See IHF, “Imprisoned Turkmen Journalist and Human Rights Defender Dies in Custody,” 14 September 2006, [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=4302](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4302).

espionage and “planning disruptive activities” after illegal arms – which, according to witnesses, had been planted – were found in his car, and after attending human rights training courses in Poland and Ukraine.<sup>4</sup>

The trial of the three activists in the municipal court in Ashgabat's Azatlyk district on 25 August 2006 demonstrated the persistent, widespread violations in Turkmenistan of all trial standards: it was held behind closed doors, with no legal counsel present, and lasted only a few minutes. After this mock trial, an official simply showed the lawyers a document recording the charge, verdict and sentence. All defendants were found guilty of being in illegal possession of ammunition and sentenced to imprisonment of six to seven years.<sup>5</sup> The trial showed the total absence of a competent, independent and impartial tribunal. Human rights monitors are convinced that the charges were fabricated and the defendants were simply punished for peacefully exercising their right to freedom of expression.

In **Tajikistan**, practices of appointment and promotion of judges and the financial dependence of judicial bodies on the executive branch are among the facts that make courts vulnerable to influence from public officials: judges are nominated by the president and are under political pressure by authorities. Measures taken to combat corruption among judges have been clearly insufficient: out of a high number of complaints against judges for corruption, only two were criminally punished in 2005.

Reminiscent of the Soviet legal system, public prosecutors still play a decisive role during court proceedings – a practice that violates the principle of equality of arms. Prosecutors are also allowed to sanction arrests and a law adopted in July 2005 further strengthened their powers.<sup>6</sup> A power struggle between prosecutors and judges appears to be ongoing, with at least one judge having ended up custody, not for corruption but for handing down too lenient sentences. Reforms that would strengthen the status of judges have still not been carried out.<sup>7</sup>

In **Belarus**, the fundamental lack of respect for international fair trial standards, and the total dependence of the judiciary on the executive branch are an integral part of the authoritarian rule. The presidential elections in March 2006, which were accompanied by police violence, arbitrary arrests and trials against opponents, characterized this rule. The peaceful public demonstrations held on 24-25 March 2006 were violently dispersed by the police. About 1,000 people were arrested, tried without access to a defense lawyer and sentenced to short administrative detention.<sup>8</sup>

---

<sup>4</sup> IHF, “Turkmenistan: Open letter from a coalition of human rights organizations,” 18 July 2006, [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=4280](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4280). For more information, see IHF intervention on human rights defenders, p. 30

<sup>5</sup> RFE/RL, OSCE, RFE/RL Turkmen Correspondent Sentenced to Six Years in Prison, 25 August 2006, <http://www.rferl.org/releases/2006/08/433-250806.asp>.

<sup>6</sup> Information from the Tajik Bureau for Human Rights and the Rule of Law, March 2006.

<sup>7</sup> Institute for War and Peace Reporting, Daler Khamidov, “Trouble in Court in North Tajikistan,” 19 April 2005, [http://www.iwpr.net/?apc\\_state=hruirca2005&l=en&s=f&o=238865](http://www.iwpr.net/?apc_state=hruirca2005&l=en&s=f&o=238865).

<sup>8</sup> See, for example, IHF/Belarusian Helsinki Committee (BHC), “Police Violence in Minsk Results in Severe Injuries: IHF and Helsinki Committees in Belarus, Norway and Sweden Appeal for Restraint and Respect for Right to Peaceful Protest,” 25 March 2006, [http://www.ihf-hr.org/viewbinary/viewhtml.php?doc\\_id=6720](http://www.ihf-hr.org/viewbinary/viewhtml.php?doc_id=6720); IHF/BHC, “International Community Must Denounce Beatings, Arrests, and Convictions In Minsk,” 21 March 2006, [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=4217](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4217).

The dependence of the judiciary on the presidential administration was also demonstrated by the arrest and conviction of President Lukashenka's rival, Alyaksandr Kazulin. Kazulin was sentenced on 13 July 2006 to five and a half years of imprisonment for hooliganism and organizing and participating in anti-government demonstrations earlier this year.<sup>9</sup> As of mid-September, he refused prison food fearing poisoning after he had suddenly suffered from various health problems.

Another distinctive case is that of four members<sup>10</sup> of the Initiative Partnerstva (Partnership). On 4 August 2006, they were sentenced by the Central District Court of Minsk for illegal activities under article 193(1) of the Criminal Code.<sup>11</sup> The case was based on KGB claims that the Partnerstva activists had been organizing fraudulent exit polls and planning a violent uprising after the election. The trial was closed to the public, journalists and defendants' relatives, also, during their pre-trial detention the activists were allowed to have only limited contact to their lawyers and were denied access to their family.<sup>12</sup>

In the Chechen Republic and the adjacent **Northern Caucasian** regions of the **Russian Federation**, systemic falsifications of criminal cases have become a disturbing trend.<sup>13</sup> Individuals who are suspected of participation in or collaboration with a rebel group are frequently abducted and held in illegal, secret places of detention where they are tortured with the aim of extracting "confessions."<sup>14</sup> After such self-incriminating statements their status can be "legalized" and they are transferred to an official place of detention. On-duty attorneys proposed by the investigating officers typically ignore the detainees' complaints about torture and requests for medical assistance or examination to establish physical abuse, while independent physicians are not allowed to visit the detainees. In the few cases where detainees have had access to an attorney of their own choosing, the attorney has usually not been allowed to meet the suspect before the "confession" has been signed. The practice of systematic fabrication of charges serves to further destabilize the situation in the Northern Caucasus.

## Recommendations

1. To the government of **Uzbekistan**:
  - Ensure that an independent investigation be conducted into the Andijan massacre;

---

<sup>9</sup> IHF/BHC, "Freedom of Expression in Belarus, Contribution by the International Helsinki Federation for Human Rights and the Belarusian Helsinki Committee to the second Supplementary Human Dimension Meeting on Freedom of the Media, Protection of Journalists and Access to Information," 13-14 July 2006.

<sup>10</sup> Mikalay Astreyka, Tsimafey Dranchuk, Enira Branitskaya and Aliaksandr Shalayka.

<sup>11</sup> Charter 97, "Verdicts to Partnerstva Activists Delivered," 8 April 2006, <http://www.charter97.org/eng/news/2006/08/04/prigovor>.

<sup>12</sup> Observatory for the Protection of Human Rights Defenders, "Belarus: Judicial proceedings against four members of Initiative Partnership/Incommunicado detention," 21 August 2006, <http://www.omct.org/base.cfm?page=article&num=6210&consol=close&kwrd=&cfid=2517172&cftoken=79892>.

<sup>13</sup> Numerous fabricated criminal cases, in particular, in Chechnya and in Ingushetia, have been described in detail by the IHF, the "Memorial" Human Rights Center, and Center "Demos." See, for example, IHF, "Unofficial Places of Detention in the Chechen Republic," 12 May 2005, and "Secret Prisons in Chechnya Should Be of Concern to the Council of Europe," 15 May 2006, memoranda to PACE – Committee on Legal Affairs and Human Rights, [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=4249](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4249).

<sup>14</sup> See also the IHF intervention on international humanitarian law, p. 21.

- Ensure that the cases of all individuals sentenced to prison terms as organizers of the Andijan protests in May 2005 be reviewed opened and the defendants be guaranteed fair trials, as provided by the international treaties to which Uzbekistan is party. These trials should be open to relatives of the defendants, media and international observers;
- Invite the UN High Commissioner for Human Right, the UN Specials Rapporteurs on extrajudicial killings, on the independence of the judiciary and on torture, and the UN Independent Expert on Uzbekistan to visit Uzbekistan, including the Andijan region.

2. To the government of **Turkmenistan:**

- Conduct an independent and thorough investigation into the death in custody of Ogulsapar Muradova;
- Ensure the unconditional release of Annakurban Amanklychev and Sapardurdy Khajiev and, pending their release, to allow them immediate access to the attorney of their choice, to their families, to medical care and food in conformity with international minimum standards of treatment of detainees, and to international monitors and physical integrity;
- Take effective measures to reform the Turkmen judicial system to ensure the independence of the judiciary and fair trials, in accordance with international law, to all defendants.

3. The government of **Tajikistan:**

- Swiftly complete legal reforms in order to guarantee the independent operation of the judiciary, the principle of equality of arms, and to ensure that persons allowed to work as legal counsels are properly trained;
- Organize training for parliament officials and judges to improve the financial oversight of courts and encourage more transparency in the judicial system;
- Introduce effective mechanisms to allow adequate implementation of laws in place – and improve them – to combat corruption.

4. The government of **Belarus:**

- Ensure the immediate and unconditional release of all of the political opponents arrested during the March demonstrations and drop criminal charges against all political opponents;
- Courts to invoke relevant provisions of the Constitution and international human rights treaties in their administration of justice.

5. The government of the **Russian Federation:**

- Make clear to all members of law enforcement and military forces under its authority that “unofficial” or secret places of detention are illegal both under Russian and international law, and that all detainees must be treated according to law and international standards for the treatment of detainees and prisoners, and due process. In this respect, the Russian government should also allow the publication of the reports by the European Committee for the Prevention of Torture (CPT) on its visits to the Chechen Republic, which apparently include references to possible secret places of detention, as noted in the CPT statement of 10 July 2003;
- Introduce internal checks in order to establish wrongdoings in the treatment and interrogation of suspects to ensure that illegal practices are abolished;
- Make clear to all officials involved in the investigation into alleged criminal acts that international standards of due process must always be respected, including the examination of all allegations of torture, exclusion of evidence extracted under duress, and allowing detainees prompt access to a legal counsel and physician of their own choosing.

In addition, keeping in mind that the government of **Uzbekistan** has failed to conduct an independent investigation into the Andijan killings; has shown no willingness to bring to justice any law or security officer or public official responsible for the massacre; and has ignored investigation results by intergovernmental organizations, including the OSCE/ODIHR,<sup>15</sup> and NGOs, which have seriously questioned the fairness of the trials of people allegedly responsible for the Andijan protests and raised concern about the fate of Uzbek refugees in the aftermath of the Andijan event,

#### 6. The OSCE should

as a matter of priority and within the Permanent Council, continue its efforts to follow up on developments in Uzbekistan with regard to the Andijan event and the treatment of refugees from Uzbekistan in neighboring countries.

---

<sup>15</sup> OSCE/ODIHR,” OSCE Report on Uzbekistan trials calls for verdicts on 15 Andijan defendants to be set aside,” 24 April 2006 and *The OSCE/ODIHR Trial Monitoring, Uzbekistan, September-October 2005*, 21 April 2006, <http://www.osce.org/item/18769.html>.