

(Translated from Russian)

Summarized information from the State bodies of the Kyrgyz Republic in response to the communication from the Special Rapporteurs of the United Nations concerning the case of Azimjan Askarov

In June 2010, there was a clash between citizens of Kyrgyz and Uzbek ethnicities in the city of Osh. One of the participants was Azimjan Askarov, who called on citizens of Uzbek ethnicity to capture the chief of police and kill the remaining law enforcement officers. As a result, 13 police officers sustained physical injuries, and Inspector ■■■■■ of the district internal affairs office was killed.

In this connection, the investigation bodies initiated criminal proceedings against Mr. Askarov and others and brought charges under articles 97, 227, 233, 241, 299, 299-2 and 340 of the Criminal Code of Kyrgyzstan (1997 version).

On 15 September 2010, the Bazar-Korgon District Court, Jalal-Abad Province, found Mr. Askarov guilty under articles 28, 30, 227 (2), subparagraphs (1) and (3), 233 (1) to (3), 241 (1), 299 (2), subparagraph (1), and 340 of the Criminal Code (1997 version) and sentenced him to life imprisonment with deprivation of the right to engage in legal or notarial activities or hold any post in the law enforcement agencies, procuratorial bodies or non-governmental organizations for a period of 3 years, and with confiscation of property by the State.

On 10 November 2010, the Jalal-Abad Provincial Court upheld the judgment delivered on 15 September 2010 by the Bazar-Korgon District Court, Jalal-Abad Province.

On 20 December 2011, the Supreme Court upheld these judgments against Mr. Askarov.

Mr. Askarov and his counsel filed an application for a review of the criminal case in the light of new evidence. Reference was made in that application to the Views of the United Nations Human Rights Committee on his case.

On 12 July 2016, the Supreme Court quashed these court rulings, and the criminal case was referred to the Chuy Provincial Court for a retrial.

The trial at the Chuy Provincial Court was public and was attended by representatives of embassies located in Kyrgyzstan, international organizations and journalists who had previously expressed a desire to be present.

In addition, the Ombudsman attended the proceedings, which were fully covered by the media and on websites.

During the trial, Mr. Askarov's guilt was fully established on the basis of statements made by witnesses and victims, expert opinions and physical evidence.

The Court also examined the defendant's claim to have been tortured during the investigation, and found that it could not be substantiated. The injuries suffered by Mr. Askarov had been caused by ■■■■■, a detainee of Uzbek ethnicity, at a time when the two men had been sharing a cell for persons who have committed administrative offences. Mr. Askarov was unable to refute Mr. ■■■■■'s testimony in court on the physical injuries he had inflicted on the defendant. According to the forensic medical report, Mr. Askarov's injuries were estimated to have been inflicted at the time he was beaten by Mr. ■■■■■.

On 24 January 2017, the Chuy Provincial Court amended the judgment delivered against Mr. Askarov by the Bazar-Korgon District Court, Jalal-Abad Province, on 15 September 2010.

Mr. Askarov was found guilty under article 241 (1) of the Criminal Code (1997 version), but no penalty was imposed on the basis of article 67 of the Code.



On the basis of article 59 of the Criminal Code (1997 version), a final penalty of life imprisonment with deprivation of the right to engage in legal or notarial activities or hold any posts in law enforcement agencies, procuratorial bodies or non-governmental organizations for a period of 3 years, and with confiscation of property by the State, was imposed on Mr. Askarov.

No further amendments were made to the judgment.

On 30 July 2019, the Chuy Provincial Court ruled to dismiss Mr. Askarov's application and a submission received from facility No. 21 of the State Penal Correction Service under the Government of Kyrgyzstan for a review of the criminal case in the light of new evidence following the entry into force of the Criminal Code of 1 January 2019.

On 2 December 2019, the Supreme Court of Kyrgyzstan amended the ruling issued against Mr. Askarov by the criminal and administrative division of Chuy Provincial Court on 30 July 2019.

By that decision, the Court granted the request, in Mr. Askarov's application and the submission received from State Penal Correction Service facility No. 21, for a review of the criminal case in the light of new evidence following the entry into force of the Criminal Code on 1 January 2019.

The judgment delivered against Mr. Askarov by the Chuy Provincial Court on 24 January 2017 was amended.

Mr. Askarov's actions were classified under articles 39, 43 and 244 (2), subparagraphs (1) and (2), of the Criminal Code. On the basis of article 76 (3) of the Criminal Code, the penalty was set at imprisonment for a period of 7 years and 6 months.

Mr. Askarov's actions were classified under article 264 (1) of the Criminal Code and, under this article and on the basis of article 49 (8) of the Code (1997 version), the penalty was set at imprisonment for a period of 7 years and 6 months.

On the basis of article 59 of the Criminal Code (1997 version), Mr. Askarov was sentenced to life imprisonment with deprivation of the right to engage in legal or notarial activities or hold any posts in law enforcement agencies, procuratorial bodies or non-governmental organizations for a period of 3 years, and with confiscation of property by the State.

Confiscation of property was replaced with a coercive criminal law measure of confiscation (seizure) of property.

No further amendments were made to the judgment.

However, Mr. Askarov still had the right to file a cassational appeal against the judgment of the Chuy Provincial Court of 24 January 2017, as amended by the Supreme Court on 2 December 2019.

On 13 January 2020, Mr. Askarov and his counsel filed a cassational appeal against the judgment delivered by the Chuy Provincial Court on 24 January 2017.

A division of the Supreme Court of Kyrgyzstan studied the criminal case file thoroughly and in full, and concluded that Mr. Askarov's guilt was fully confirmed by victim and witness statements, forensic medical reports, witness confrontation reports and other elements in the file, as they complement each other and give no cause for doubt.

Consequently, on 13 May 2020, the Chuy Provincial Court judgment of 24 January 2017 was upheld.

Following its consideration of the criminal case, the court division declared that the evidence given by victims and witnesses during the investigation and court proceedings, as presented in the court rulings, was admissible, given that the witnesses' procedural rights under the criminal procedure law of Kyrgyzstan had been explained to them during the interviews and they had been warned that it is a criminal offence under articles 330–331 of the Criminal Code to knowingly give false testimony.

The evidence presented in the court rulings may thus be considered relevant and admissible. The testimonies are consistent and, overall, establish the same facts implicating Mr. Askarov in the acts that he committed. The circumstances set out by his defence

counsel cannot be taken into account, as they have already been thoroughly examined during the court proceedings.

Moreover, the court division did not identify any mitigating or exceptional circumstances that might have significantly lessened the danger to society of the crimes committed by Mr. Askarov and thus might have warranted a reduction of the penalty imposed on him under article 74 of the Criminal Code. The penalty was determined in accordance with the Criminal Code provisions on the purposes of punishment and in strict compliance with the requirements of the criminal legislation of Kyrgyzstan.

In other words, in the criminal case involving Mr. Askarov, the judicial authorities of Kyrgyzstan took all the necessary procedural steps in compliance with the requirements of criminal procedure legislation and, following a comprehensive and objective examination of the criminal case, court rulings in keeping with national legislation were issued.

Kyrgyzstan respects the United Nations Human Rights Committee and cooperates with it in relation to its Views. In pursuance of the country's commitment to cooperate with the Committee in that regard, new trials were held in Mr. Askarov's case in 2016–2017 and 2019 in accordance with the principles of a fair trial.

Investigation of torture

On 17 June 2010, in view of the physical injuries sustained by Mr. Askarov, who had been detained as a suspect in a criminal case in accordance with the procedure set out in article 94 of the Code of Criminal Procedure, the Bazar-Korgon district procurator's office ordered a forensic medical evaluation.

According to forensic medical report No. 210 of 24 June 2010, the examination of Mr. Askarov, which was conducted in the presence of the lawyer ■■■■■■■■■■, revealed bruising on his right cheekbone and right shoulder. Similar bruising was found on his left shoulder and lower back. No other physical injuries were noted.

Under questioning, Mr. Askarov informed the expert that, at the Bazar-Korgon district internal affairs office, he had been placed in a holding cell together with another man, who had struck him across the cheekbone and then pushed him, causing him to fall to the concrete floor. Mr. Askarov did not tell the expert (who, incidentally, was not involved in the investigation of the criminal case) that he had been beaten or tortured by police officers.

On 17 June 2010, the chief of the investigation task force interviewed Mr. Askarov as an accused person, with the participation of Mr. ■■■■■■■■■■. *In the interview report, Mr. Askarov wrote in his own hand that the police officers had not used illegal methods against him, that there had been no breach of the law in relation to him and that he had no physical injuries.*

Subsequently, on 22 June 2010, the lawyer ■■■■■■■■■■ filed an application with district procurator A. ■■■■■■■■■■ in relation to a conversation he had had with Mr. Askarov in the presence of a guard. During this conversation, he had examined Mr. Askarov's body and found bruising on his back. He requested a forensic medical evaluation, as there were reasons to believe that Mr. Askarov was being tortured, and the opportunity to speak to him in private.

On 23 June 2010, the chief of the investigation task force again interviewed the accused, Mr. Askarov, with regard to the physical injuries that he had sustained. In response, Mr. Askarov explained that, after his arrest, he had been taken to a cell for administrative detainees. At night, as he was sleeping in his seat, a man of Uzbek ethnicity had struck him and he had fallen, causing the bruising on his back. He also said that the police officers had not touched or beaten him.

When he was asked whether he wished to report the person who had beaten him, Mr. Askarov declined. *This interview was conducted in the presence of Mr. ■■■■■■■■■■.*

On 22 June 2010, an investigator at the Bazar-Korgon district procurator's office issued a decision to dismiss Mr. ■■■■■■■■■■ request for a forensic medical evaluation, as one had already been ordered.

Subsequently, on 24 June 2010, Mr. [REDACTED] addressed an application to the Jalal-Abad provincial procurator for the institution of criminal proceedings against the deputy district procurator of Bazar-Korgon for obstruction of the professional activities of a lawyer and the torture of Mr. Askarov.

A review showed that, on 16 June 2010, Mr. Askarov was arrested and taken to an administrative cell of the Bazar-Korgon district internal affairs office in which Mr. [REDACTED] and [REDACTED] were being held. Subsequently, Mr. [REDACTED] claimed that his house had been burned down, he had been made homeless and many people had been killed as a result of Mr. Askarov's illegal actions, and struck Mr. Askarov in the head area and on various parts of his body. In other words, Mr. [REDACTED] blamed Mr. Askarov for what had happened.

On 25 June 2010, the deputy procurator for Jalal-Abad Province, [REDACTED], ordered a forensic medical evaluation of Mr. Askarov.

On the same day, Mr. Askarov addressed an application to the provincial procurator to request that criminal proceedings should not be brought against Mr. [REDACTED], as Mr. Askarov had no claims against him. Mr. Askarov also stated that none of the police officers had beaten him and categorically refused to undergo a forensic medical evaluation, noting that such an evaluation had already been conducted.

Mr. [REDACTED] actions constitute an offence under article 112 (2) of the Criminal Code (1997 version), namely grievous bodily harm with intent, without causing short-term harm to health. In accordance with articles 26 (2) and 329 of the Code of Criminal Procedure (1999 version), this is an offence in respect of which proceedings are initiated solely on the basis of a complaint filed by the victim in the form of a court application. Mr. Askarov did not apply to have criminal proceedings brought against Mr. [REDACTED].

Following the review, on 28 June 2010, the deputy procurator for Jalal-Abad Province, Mr. [REDACTED], decided not to initiate criminal proceedings for the torture of Mr. Askarov:

- For lack of evidence of an offence
- As the victim had not filed a complaint against Mr. [REDACTED]
- As the actions of the deputy district procurator did not constitute an offence

On 14 July 2010, Mr. [REDACTED] appealed this decision to the Jalal-Abad Municipal Court.

On 26 July 2010, the Jalal-Abad Municipal Court dismissed Mr. [REDACTED] complaint.

This decision of the Jalal-Abad Municipal Court of 26 July 2010 was not appealed by Mr. [REDACTED], other lawyers or Mr. Askarov himself, either to the Jalal-Abad Provincial Court or to the Supreme Court.

Mr. [REDACTED] submitted an application with appended documents to the Office of the Procurator General. They included a handwritten statement in which Mr. Askarov claimed that he had been tortured and a request to open a criminal case.

After consideration of the application, the investigator for particularly important criminal cases of the Jalal-Abad provincial procurator's office conducted the appropriate review and, on the basis of the findings, decided on 17 October 2011 not to bring criminal proceedings in response to Mr. [REDACTED] application (for the third time) for lack of evidence of an offence.

Mr. Askarov and his lawyers did not appeal this decision.

Moreover, on 16 December 2010, an article by [REDACTED] entitled "The story of an investigation" was published on the website www.mk.kg. It is stated in the article that Mr. Askarov was unlawfully charged with incitement of ethnic hatred, incitement to attack police officers and the murder of Inspector [REDACTED], was beaten and tortured by police in the building of the Bazar-Korgon district internal affairs office and was forced to refuse to undergo a forensic medical evaluation. It is also noted in the article that, according to Mr. Askarov, he was forced to pick up garbage in the area around the Bazar-Korgon regional

internal affairs office and was struck across the head with the handle of a gun. The officers also threatened to put a bag over his head and put chlorine in it.

During the review, the forensic medical expert who was questioned on the circumstances of the case stated that Mr. Askarov had bruising on his face and back. Under questioning, Mr. Askarov explained that his physical injuries had been inflicted by his cellmate (Mr. [REDACTED]). In addition, the seven Bazar-Korgon district internal affairs officers who were questioned, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED], denied that they had beaten and abused him.

The investigator for particularly important cases of the Jalal-Abad provincial procurator's office investigated the claims made in the article and found that they *did not conform to reality*.

Consequently, on 10 January 2011, the decision was taken not to open a criminal case in response to Mr. [REDACTED] article, for lack of evidence of an offence.

This decision was appealed by [REDACTED], Mr. Askarov's lawyer, to the Jalal-Abad Municipal Court.

In a decision of 1 August 2013, the Jalal-Abad Municipal Court dismissed Mr. [REDACTED] complaint.

This decision was appealed to the Jalal-Abad Provincial Court, which, on 27 August 2013, dismissed the complaint and upheld the decision of the district court.

On 16 October 2013, the Supreme Court upheld these court rulings and dismissed the lawyer's complaint.

Thus, courts at all three levels dismissed Mr. [REDACTED] complaint seeking the annulment of the 10 January 2011 decision of the investigator for particularly important cases of the Jalal-Abad provincial procurator's office.

In addition, on 13 May 2013, the investigation task force of the Office of the Procurator General interviewed [REDACTED] (an ethnic Uzbek), a physician at the Family Medical Centre in the district of Bazar-Korgon, who stated that, on 26 October 2010, she had been invited by the duty officer of the remand centre of the Bazar-Korgon district internal affairs office to examine the detainee Mr. Askarov. During the examination, he had complained of a cough and abdominal pain, for which Ms. [REDACTED] had recommended an abdominal ultrasound, an X-ray and an examination by a surgeon, as was noted in the medical assistance log of the internal affairs office remand centre. In addition, she stated that, when she had examined Mr. Askarov, *she had not noticed or seen any physical injuries*.

Moreover, on 13 May 2013, the director of the trauma unit at Bazar-Korgon Local Hospital, [REDACTED], was interviewed. He stated that, on 26 June 2010, he had examined Mr. Askarov as a surgeon and had diagnosed "bruising across the lumbar region". No other persons had been present at Mr. Askarov's examination.

These injuries are described in the review file. Following a legal assessment of this information, on 28 June 2010 the deputy procurator of Jalal-Abad Province issued a decision not to initiate criminal proceedings for lack of evidence of an offence.

In addition, when interviewed on 13 May 2013, a medical officer (an ethnic Uzbek) at the emergency unit of the Family Medical Centre in the district of Bazar-Korgon stated that, on 7 November 2010, she had examined Mr. Askarov at the Bazar-Korgon district remand centre, where the latter had complained of abdominal pain, but she had not seen any physical injuries.

Thus, during examinations by physicians, Mr. Askarov did not mention the torture and beating that he had allegedly experienced, despite having been in a position to do so.

The following persons who were interviewed by the investigation task force of the Office of the Procurator General stated that the claims that Mr. Askarov's rights were violated are unfounded: the deputy district procurator and the police officers who worked at the Bazar-Korgon district internal affairs office in 2010, namely [REDACTED], who worked as chief of the remand centre of the Bazar-Korgon district internal affairs office, and [REDACTED].

[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

The lawfulness of the decision not to initiate criminal proceedings on the basis of the information contained in Mr. [REDACTED] article “The story of an investigation”, published on the website www.mk.kg, was confirmed by courts at all three levels.

In addition, on 25 May 2012, [REDACTED], Director of the Grazhdane protiv Korruptsii (Citizens against Corruption) Human Rights Centre, filed an application with the Office of the Procurator General to reopen the proceedings on the basis of newly discovered evidence.

The application stated that the investigation had not been carried out objectively and that during the June events, i.e. on 12 and 13 June 2010, Mr. Askarov and other individuals had provided assistance to the injured, had taken them to a hospital and had captured the events on video, as could be confirmed by witnesses who had not previously been interviewed in the case. A disk containing videoed statements by the witnesses was appended to the application.

In order to verify these claims, on 5 June 2012, the Jalal-Abad provincial procurator's office opened proceedings to verify the newly discovered evidence.

Based on the results of the investigation, on 15 June 2012 the proceedings were discontinued, as Ms. [REDACTED] claims were not substantiated.

Furthermore, on 18 February 2013, the Office of the Procurator General received, from the Ministry of Foreign Affairs, copies of individual communications submitted by Mr. Askarov, ■■■■■■■■■■, ■■■■■■■■■■, Mr. ■■■■■■■■■■ and ■■■■■■■■■■ to the United Nations Human Rights Committee under the first Optional Protocol to the International Covenant on Civil and Political Rights. These communications contain, inter alia, claims that the investigation of Mr. Askarov was not objective, that his conviction was unlawful, that he was not guilty of the charges laid against him and that he was tortured.

On 6 May 2013, in the interest of thoroughness and with a view to objectively investigating the claims made by Mr. Askarov and the others in the individual communications, the Office of the Procurator General reversed the 15 June 2012 decision of the Jalal-Abad provincial procurator's office, and the case was reopened in the light of the newly discovered evidence.

However, the sole source of the information that Mr. Askarov had been “beaten” and “tortured” by police officers was Mr. Askarov himself, whose claims were not substantiated by anything or anyone else. Almost every argument raised by Mr. Askarov, even those that did not pertain to the substance of the accusations, did not conform to reality.

In the course of the investigation, all of the claims made in the communications were thoroughly reviewed. The results of the investigation did not establish the existence of any grounds on which the Supreme Court could, under article 384 of the Code of Criminal Procedure (1999 version), order the reopening of the criminal case in the light of newly discovered evidence.

On 5 February 2014, on the basis of the results of the investigation, the proceedings opened in the light of the newly discovered evidence were terminated.

Access to health care

Since 2010, Mr. Askarov has been monitored by medical staff for the following diagnoses: [REDACTED], [REDACTED], [REDACTED], [REDACTED].

and

Since his admission to State Penal Correction Service facilities, Mr. Askarov has had full access to medical care. Regular clinical and instrumental tests have been performed, and consultations with highly specialized medical personnel have regularly been held.

In 2011, a cardiologist and an ophthalmologist of the Ministry of Health were consulted, and an [REDACTED] and [REDACTED] were performed. No acute pathological changes were identified.

All necessary measures are being taken in State Penal Correction Service facilities to protect prisoners from COVID-19. The number of employees on duty has been reduced, and the physical distance between employees and their compliance with infection control rules are monitored.
