

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on minority issues and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA KGZ 2/2020

5 May 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on minority issues and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 34/5, 35/11, 34/6 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the repeated denial of a right to fair trial of human rights defender Mr. **Azimjan Askarov**, whose health is severely deteriorating in his place of detention.

Mr. Azimjan Askarov is a human rights defender who forms part of the ethnic Uzbek minority in Kyrgyzstan. He was the Director of Vozdukh (Воздух), a non-governmental organisation (NGO) based in the village of Bazar-Korgon in the Jalal-Abad region of Kyrgyzstan. Mr. Askarov spent over ten years working in the field of human rights. With Vozdukh, he monitored incidents of police brutality and documented the mistreatment of detainees. He was particularly active during the ethnic conflict in Bazar-Korgon in 2010.

We previously wrote to your Excellency's Government regarding Mr. Askarov's case in four communications; KGZ 1/2011, KGZ 11/2010, KGZ 8/2010 and KGZ 3/2010. We raised concerns in these communications that Mr. Askarov may have been arbitrarily arrested in 2010 for documenting human rights abuses during the ethnic conflict in Bazar-Korgon. Serious concerns were raised over multiple irregularities during his trial, including ill-treatment of Mr. Askarov and witness testimony obtained under torture. He was convicted of multiple charges including "complicity in the murder of a law-enforcement officer" which carried a life sentence at the time. We thank your Excellency's Government for the responses received to all of these communications.

The United Nations Human Rights Committee also issued a statement on Mr. Askarov's case on 21 April 2016, highlighting that Mr. Askarov had been "arbitrarily

detained, held in inhumane conditions, tortured and mistreated, and prevented from adequately preparing his trial defence” and called for his immediate release.¹

According to the new information received:

On 20 December 2011, the Kyrgyz Supreme Court upheld Mr. Askarov’s life sentence after his lawyers appealed the decision of the Court of Appeals before the Supreme Court. The presiding judges allegedly did not address the reported irregularities during his initial trial in 2010. He allegedly continued to suffer poor detention conditions and was frequently placed in solitary confinement in a small cell with no natural light and an open toilet.

On 5 May 2013, the General Prosecutor’s office created an investigative committee to re-examine Mr. Askarov’s case. The investigation was supported by new evidence provided by Mr. Askarov’s lawyers, who travelled to the village of Bazar-Korgon and collected 17 independent witnesses who could testify to the innocence of Mr. Askarov. However, on 16 June 2014 the Bishkek City Court dissolved the investigative committee with Kyrgyzstan Supreme Court confirming its dissolution in September 2014.

On 11 July 2016, following the statement made by the Human Rights Committee, the Supreme Court of Bishkek heard another appeal of Mr. Askarov’s case. The defender was not permitted to attend the hearing, and a number of witnesses were not heard during the trial. Mr. Askarov’s lawyers and family were confronted with threats and attacks from the family and supporters of the police officer killed in 2010. The police allegedly did not intervene. The Supreme Court ordered the Chui Regional Court of Appeal to rule on the appeal request. On 24 January 2017, his sentence was upheld.

Mr. Askarov’s family have also reportedly been intimidated by the authorities. On 25 May 2016, representatives of the State Property Fund of Kyrgyzstan (SPFK) along with a number of military personnel and court bailiffs called to the family home of Mr. Askarov in Bazar-Korgon to begin the process of confiscating the property into the possession of the State. The reasons for the confiscation were not clearly communicated to the family and were allegedly in conflict to the Criminal Code of Kyrgyzstan, which prohibits the confiscation of home of a prisoner’s family if the family is permanently resident there, even if a court order were issued. On 5 September 2017, the seizure order was lifted due to errors in the confiscation proceedings.

¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19853&LangID=E>

On 11 March 2019, Mr. Askarov's wife received another notice for house seizure from the Oktyabrsky District Department of Service of Court Bailiffs. The seizure was aimed at collecting the 175,000 Kyrgyzstani Som (approx. 2,205 USD) compensation which was awarded to the family of the police officer who was killed in 2010. The hearing was postponed after the plaintiffs did not appear at the trial, and the next hearing is due to take place on 12 May 2020.

On 1 January 2019, amendments to the Criminal Code of Kyrgyzstan came into effect that allowed Mr. Askarov's lawyers to again appeal for a review of the sentence. Under the amended law, the charge "complicity in the murder of a law-enforcement officer" no longer carries a life sentence. His lawyers argued that under the amendments, Mr. Askarov had already served his maximum sentence. On 30 July 2019, the Chui Regional Court upheld the life-sentence.

On 13 May 2020, the Supreme Court will hear an appeal of the July 2019 decision by the Chui Regional Court, which will be the final appeal Mr. Askarov will be permitted to make on his case.

Mr. Askarov's health has significantly deteriorated in the inadequate prison conditions in which he has been kept. After a visit in April 2019, his lawyers raised concerns that Mr. Askarov had difficulty breathing, suffered significant weight loss and had developed a debilitating cough.

On 30 April 2020, the Government of Kyrgyzstan reviewed a draft bill "On Amnesty in Honour of the 75th Anniversary of Victory in the Great Patriotic War of 1941-1945 and the 10th anniversary of the April 2010 People's Revolution" which would grant amnesty to certain groups of detainees on 9 May 2020. The law would reduce prison populations and running costs but may also allow for the implementation of physical distancing measures to mitigate the spread of the COVID-19 virus. Mr. Askarov, who will turn 69 years old in May 2020 and continues to suffer from respiratory problems and cardiac issues, is in an at-risk group of individuals in the context of the COVID-19 pandemic.² Article 6 of the existing Law of the Kyrgyz Republic "On the Basics of Amnesty and the Procedure for its Application" rules out the possibility of amnesty for detainees serving life sentences or convicted of killing.

While we do not wish to prejudge the accuracy of the allegations, we wish to express our deep concern at the continued arbitrary detention of Mr. Askarov. We are profoundly concerned that Mr. Askarov's life sentence has been repeatedly upheld

² [who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_10#:~:text=The%20virus%20that%20causes%20COVID,provisions%20and%20social%20care.](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_10#:~:text=The%20virus%20that%20causes%20COVID,provisions%20and%20social%20care.)

despite multiple allegations that he was denied the right to a fair trial. These concerns are exacerbated by allegations of torture, dismal prison conditions and physical and psychological threats and judicial harassment of his family and legal representatives. We raise concern that lack of a fair trial and the impunity enjoyed by those who target the human rights defender and his family may discourage other human rights defenders from carrying out their peaceful and legitimate activities in the region. This could have a chilling effect on all those who monitor and document human rights violations in Kyrgyzstan, particularly those who work on minority issues.

In this regard, we would like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders. In particular, we would like to draw your attention to article 1 that states the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and to articles 2, and 6(c) of the Declaration.

We are furthermore concerned that Mr. Askarov's physical and mental integrity are at grave risk in the context of the COVID-19 pandemic. We find the reports on his deteriorating health deeply concerning, particularly as his pre-existing respiratory and cardiac conditions and his age put him in the category of persons most at risk if they contract the virus. His continued detention may contravene his right to health and ultimately his right to life, if measures are not taken to safeguard his health. We would like to remind your Excellency's Government the statement made by the UN High Commissioner for Human Rights on 25 March 2020, which called on States to "release every person detained without sufficient legal basis... and others detained simply for expressing their dissenting views."

In this regard, we would also like to remind your Excellency's Government of its obligations under Article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), ratified by Kyrgyzstan in October 1994, which guarantees all individuals, including prisoners and detainees, the right to the highest attainable standard of physical and mental health. Moreover, Article 12(2)(c) obliges States to take the steps necessary for the prevention, treatment and control of epidemic, endemic, occupational and other diseases. We also recall that States have a duty to protect the health of prisoners and detainees, in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners, also known as the Mandela Rules, in particular, Rule 24.

We reiterate our serious concern at the allegations of torture, which if confirmed would be in contravention of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 1, 2 and

16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Kyrgyzstan acceded to on 26 Aug 1998.

We would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of all detained persons not to be deprived arbitrarily of their liberty, to the presumption of innocence and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9, 10 and 11 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of International Covenant on Civil and Political Rights (ICCPR), ratified by Kyrgyzstan on 7 October 1994.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal and factual basis of the charges against Mr. Azimjan Askarov and legal basis for the upholding of his life sentence despite the numerous appeals processes.
3. Please provide information on the legal basis of the attempted confiscation of Mr. Azimjan Askarov's family home.
4. Please provide information on whether Mr. Askarov has had access to healthcare while in detention, in particular whether he has been provided with appropriate remedies for his existing medical conditions.
5. Please provide the details and, where available, the results of any investigation, and judicial or other inquiries which may have been carried out, or which are foreseen, in relation the allegations of torture and other cruel, inhuman or degrading treatment or punishment against Mr. Askarov with a view to ensure prosecution and redress. If no such measures have

been taken, please explain how this is compatible with the human rights obligations of Kyrgyzstan.

6. Please indicate what measures are being taken to ensure physical distancing is observed in prisons in order to protect prisoners from the spread of the COVID-19.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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