

Kyrgyzstan: Life sentence of Mr. Azimjan Askarov upheld by Chuy Regional Court of Kyrgyzstan

Wednesday 31 July 2019

The Observatory for the Protection of Human Rights Defenders, a partnership of FIDH and the World Organisation Against Torture (OMCT), has received new information and requests your urgent intervention in the following situation in Kyrgyzstan.

New information

KGZ 001 / 0910 / OBS 109.8

Retrial /

Arbitrary detention /

Judicial harassment

Kyrgyzstan

July 31, 2019

New information:

The Observatory has been informed by reliable sources about the ruling by the Chuy Regional Court of Kyrgyzstan to uphold the life sentence of Mr. Azimjan Askarov, the Director of the human rights organisation "Vozdukh" (Air).

According to the information received, on July 30, 2019, the Chuy Regional Court of Kyrgyzstan was to review the conviction of the human rights defender following the mitigation of several provisions of the new Criminal Code of Kyrgyzstan.

In 2017, Mr. Askarov was found guilty of violating, inter alia, Article 30-340 of the Criminal Code of the Kyrgyz Republic ("complicity in murder of law-enforcement officer") which carried life imprisonment as the maximum sentence (see background information). This provision was removed from the new Criminal Code of Kyrgyzstan, and, according to Mr. Askarov's lawyer, Mr. Valerian Vakhitov, the defender has already served the term in respect to the other charges brought against him[1].

Representatives of the British, German, and Swiss embassies, Human Rights Watch, as well as the High Commissioner for Human Rights' (OHCHR) Regional Office for Central Asia were present at the July-30 hearing. Despite requests from Mr. Askarov himself and his advocate Mr. Valerian Vakhitov, Mr. Askarov was not allowed to attend the retrial, in violation of Article 14.3 (d) of the International Covenant on Civil and Political Rights ("In the determination of any criminal charge against him, everyone shall be entitled [...] to be tried in his presence").

During this hearing, Mr. Vakhitov pleaded in favour of Mr. Askarov's release pursuant to the provisions of the new Criminal Code, and stressed the deterioration of Mr. Askarov's health. However, the state Prosecutor alleged that the cases of convicts sentenced to life imprisonment shall not be subject to revision. The Court followed the state Prosecutor's position and upheld the sentence, stating that under the article on which Mr. Askarov was convicted, the new Criminal Code also provides for life

imprisonment.

After the retrial, Mr. Askarov's advocate stated that the state Prosecutor did not get acquainted with the legislation, according to which they should have reclassified the case: the law of the Kyrgyz Republic No. 10 of January 24, 2017, that establishes the procedure for the entering into force of the new Criminal Code, indeed provides for the revision of criminal cases under Article 340 which was repealed in the new Code.

Mr. Askarov's defence intends to appeal the decision of the Chuy Regional Court to the Supreme Court of the Kyrgyz Republic.

Mr. Askarov has already served nine years in prison following an unfair trial marred by a flawed investigation, bias, lack of substantial evidence and allegations of torture and the absence of investigation thereof. In 2016, the United Nations Human Rights Committee (UNHRC) ruled that Azimjan Askarov was arbitrarily detained and was not given a fair trial and thus requested his release (see background information).

Furthermore, on the eve of the retrial, on July 29, 2019, a doctor who assessed Mr. Askarov's health condition concluded that he needs a comprehensive examination and treatment. During the doctor's visit Mr. Askarov reported "dull aches in the heart area [...], shortness of breath when walking [...], pain and heaviness in the right hypochondrium, nausea, pain in the joints, especially knees; abdominal pain, frequent urination [...], headaches, dizziness and weakness" (the Observatory holds a copy of the report in Russian). His health has severely deteriorated as he has been held in appalling conditions[2]. According to the United Nations Standard Minimum Rules for the Treatment of Prisoners, known also as "the Nelson Mandela Rules", persons with health conditions, "for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons".

The Observatory expresses its utmost concern regarding the health condition of Mr. Askarov and urges the authorities of Kyrgyzstan to immediately release him from prison as his detention is arbitrary, but also since his health condition requires urgent release on medical grounds. In the meantime, the authorities should take necessary steps to provide him with adequate medical treatment.

Background information:

As the Director of the human rights organisation "Vozdukh" (Air), Mr. Azimjan Askarov has been documenting police ill-treatment of detainees and monitoring the human rights situation in the province of Jalal-Abad, in particular the mass violence in Bazar Korgon in June 2010.

On June 15, 2010, Mr. Askarov was arbitrarily arrested by agents of Bazar Korgon police department for allegedly having urged ethnic Uzbeks to take the district official Mr. A. Artykov hostage, for having ordered the blockade of the Bishkek-Osh highway and for having urged to attack police officers. One of the attacks caused the death of a policeman, Mr. Sulaimanov.

On September 15, 2010, after what was a mock trial Mr. Askarov was sentenced to life imprisonment after he was found guilty of complicity in Mr. Sulaimanov's murder. The trial was marred with irregularities, including alleged torture and the courtroom intimidation of witnesses by police and of lawyers by the audience. Mr. Askarov and the other defendants had pleaded not guilty during the trial. Mr. Askarov's lawyer, Mr. Nurbek Toktakunov, asked for a medical examination, which was denied. According to family members of the suspects and human rights organisations, all of them were subjected to acts of torture and ill-treatment by prison guards in custody and presented visible physical injuries.

On November 10, 2010, the Court of Appeal upheld the life sentence of Mr. Azimjan Askarov following a trial marred by irregularities. At that time, the health of Mr. Askarov had already severely deteriorated.

On January 26, 2011, the defence lawyers requested the Supreme Court to examine and include new evidence in the criminal case, including a testimony made by Ms. Aziza Abdirasulova, Director of the

human rights organisation Kylym Shamy, that showed that, in May 2010, Mr. Azimjan Askarov had warned the authorities that acts of violence were being prepared in Bazar Korgon. According to Mr. Azimjan Askarov's lawyer Nurbek Toktakunov, this warning might have triggered the fabrication of this case. In addition, defence lawyer Kairat Zagibaev provided evidence showing that Mr. Askarov was not present at the scene where the incidents took place. The Supreme Court accepted the new evidence. On February 8, 2011, the same Court decided to open an investigation into the conditions of detention in Kyrgyzstan, especially in provisional detention centres, and to suspend sine die the trial against Mr. Askarov. This decision was taken following a petition made by Mr. Nurbek Toktakunov, lawyer of Mr. Askarov, on the appalling conditions of detention of his client and other prisoners in the temporary detention facilities of Bazar Korgon, which have hampered the preparation of the defence.

In October 2011, Mr. Askarov's defence team conducted a private investigation and gathered evidence pointing to the innocence of the latter and reporting use of torture and inhuman treatment against him.

On December 20, 2011, the Supreme Court upheld the sentence to life imprisonment. After years of pressure, in May 2013, a new investigation was ordered by the Vice Prosecutor General of the Kyrgyzstan Republic, but was closed nine months later for lack of legal basis.

On September 3, 2014, the Supreme Court reversed the Bishkek District Court decision of April 30, 2014 which was in favour of a re-opening Mr. Askarov's case. The hearing was marked by acts of intimidation against Mr. Askarov. It is reported that several unidentified individuals stopped the hearing and brought the convict outside of the courtroom to talk privately.

The United Nations Human Rights Committee (UNHRC) ruled in March 2016 that Mr. Azimjan Askarov was arbitrarily detained, held in inhumane conditions, tortured and otherwise ill-treated without redress, and was not given a fair trial. The ruling noted that Kyrgyzstan "violated the author's rights under article 14 (3) (e) of the Covenant [International Covenant on Civil and Political Rights]." The UNHRC urged Kyrgyzstan to immediately release Mr. Azimjan Askarov[3].

The European Union (EU) has called on Kyrgyzstan to "fully implement" the Committee's ruling in an April 2016 statement[4].

On January 24, 2017, the Chuy Regional Court of Kyrgyzstan confirmed the life sentence against Mr. Azimjan Askarov following a retrial marked by bias and procedural irregularities, including court refusal to hear some defence witnesses, inaction towards threats and violent behavior of deceased police officer's wife, restrictions to access to the courtroom, failure to investigate credible allegations of torture and ignoring acts of pressure and intimidation targeting defence witnesses and lawyers.

More recently, in January 2019, the European Parliament adopted a resolution[5] on the European Union-Kyrgyzstan comprehensive agreement calling for Azimjan Askarov's immediate release and full rehabilitation, and for Kyrgyzstan to quash his conviction and provide him with reparation.

On March 18, 2019, Mr. Askarov was transferred from temporary detention facility SIZO-1 in Bishkek, where he was held in solitary confinement in a small cell measuring approximately 1.15m x 3.5m with a bed made from concrete, an open toilet and no natural light, to Prison Colony No. 19, located about an hour outside Bishkek, in the Chuy region.

Actions requested:

Please write to the authorities of Kyrgyzstan, urging them to:

i. Immediately and unconditionally release Mr. Azimjan Askarov as his detention is arbitrary since it only seems to aim at punishing him for his human rights activities and in addition, it severely contributes to the deterioration of his medical condition;

ii. Provide Mr. Azimjan Askarov with adequate compensation in accordance with the decision of the

UNHRC;

iii. Undertake a prompt, impartial and thorough investigation into the claims of torture, otherwise, ill-treatment of Mr. Azimjan Askarov with a view to publishing the results and bringing those responsible to justice in accordance with international standards;

iv. Put an end to all acts of harassment, including at the judicial level, against Mr. Azimjan Askarov and all human rights defenders in Kyrgyzstan;

v. Ensure Mr. Askarov's rights to due process and to a fair trial including by ensuring that the recent changes in the Criminal Code are duly respected thus allowing for a revision of his case;

vi. Conform with the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, especially Articles 1 and 12.2; and

vii. More generally, ensure respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments ratified by Kyrgyzstan.

Addresses :

· Mr. Sooronbay Jeenbekov, President of the Kyrgyz Republic, Chuy Ave, 205, Bishkek, Kyrgyzstan Tel: +996 312 63 91 17, Fax: + 996312626191

· Mr. Kashkar Junushaliev, Minister of Internal Affairs, Frunze st. 469, Bishkek, Kyrgyzstan, Tel: +(996 312) 26 60 54, Fax: + 996312682044 / + 996312623853, email: secretariat@mvd.kg

· Mr. Marat Dzamankulov, Minister of Justice, 32 M. Gandhi Str., 720010 Bishkek, Kyrgyzstan, Tel: +996 (312) 656490, Fax: +996 (312) 656502, email: jm.26@mail.ru

· Ms. Otkurbek Dzhamshitov, General Prosecutor Office, 39 Erkindik Avenue, 720040 Bishkek, Kyrgyzstan, Tel: +996 (312) 663373, Fax: +996 (312) 661734

· Permanent Mission of Kyrgyzstan to the United Nations in Geneva, Avenue Blanc 51 (3rd Floor) 1202 Geneva, Tel: +41 22 707 92 20, Email: kyrgyzmission@bluewin.ch, Fax: +41 22 707.92.21

· Embassy of Kyrgyzstan in Brussels, Abdijstraat 47 1050 Brussels, Belgium, Tel: + 32 2 640 18 68 / + 32 2 640 38 83, Fax: + 32 2 640 01 31, Email: aitmatov@infonie.be

Please also write to diplomatic representations of Kyrgyzstan in your respective countries.

Paris-Geneva, July 31, 2019

Kindly inform us of any action undertaken quoting the code of this appeal in your reply.

The Observatory for the Protection of Human Rights Defenders (the Observatory) was created in 1997 by FIDH and the World Organisation Against Torture (OMCT). The objective of this programme is to intervene to prevent or remedy situations of repression against human rights defenders. FIDH and OMCT are both members of ProtectDefenders.eu, the European Union Human Rights Defenders Mechanism implemented by international civil society.

To contact the Observatory, call the emergency line:

· **E-mail: Appeals@fidh-omct.org**

· **Tel and fax FIDH + 33 (0) 1 43 55 25 18 / +33 1 43 55 18 80**

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[1] The decision of Bazar-Korgon District Court (Judge Mr. N. Alimkulov) dated September 15, 2010 sentenced Mr. Azimjan Askarov to 9 years of imprisonment under Articles 28, 30, 227 Part 2 § 1, 3 of the Criminal Code (hostage taking); to 1 year of imprisonment under Article 241 Part 1 (illegal possession of firearms); to 5 years of imprisonment with deprivation of the right to occupy certain positions or engage in certain activities under Article 299, Part 2 § 1 (inciting hatred); to 9 years of imprisonment under Article 233§1, to 4 years of imprisonment under Article 233§2 and 3 years of imprisonment under Article 233§3 (organisation of riots); and to life imprisonment under Article 30-340 (complicity in the murder of a law enforcement officer). He was acquitted for lack of corpus delicti under Article 299-2 part 1 of the Criminal Code (for more details see an ICJ legal opinion on Mr. Askarov's retrial: <https://www.icj.org/kyrgyz-republic-icj-legal-opinion-on-askarov-retrial-concludes-his-conviction-should-be-quashed/>).

[2] According to his lawyers, "Askarov has lost weight, he is coughing all the time. He has a dry cough, and at times, he is unable to catch his breath. A r. Askarov complained that his legs are very cold, and nothing helps - not socks, shoes, or heating. He has stopped drinking fluids to lessen the number of times he must use the toilet."

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

[4] See : https://eeas.europa.eu/headquarters/headquarters-homepage_my/2869/Statement%20by%20the%20Spokesperson%20on%20Azimjon%20Askarov

[5] See : https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwjVi-f_5sjiAhVBLBoKHfs8BnoQFjAAegQIAhAC&url=http%3A%2F%2Fwww.europarl.europa.eu%2Fdoceo%2Fdocument%2FTA-8-2019-0004_EN.docx&usg=AOvVaw0O_xzTHAzClBMm7aFmr4BP