

# KYRGYZSTAN

## LIFE SENTENCE AGAINST HUMAN RIGHTS DEFENDER AZIMJAN ASKAROV CONFIRMED IN CONTRADICTION WITH UN BODY RECOMMENDATIONS

International Judicial Observation Mission Report



February 2017

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Cover photo: Azimjan Askarov sits behind bars at Chuy administrative court in Bishkek, Kyrgyzstan, on January 24, 2017. ©Nezir Aliyev / Anadolu Agency

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Directors of publication: Dimitris Christopoulos and Gerald Staberock  
Authors of the report: Kirill Koroteev, Julia Ouahnon  
Editing and coordination: Alexandra Pomeon O'Neill, Miguel Martín Zumalacárregui, Delphine Reculeau, Hugo Gabbero  
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## Introduction

On January 24, 2017, the Chuy Regional Court of Kyrgyzstan confirmed the life sentence against human rights defender **Azimjan Askarov**, after a fresh "appeal retrial".

This followed an April 2016 United Nations Human Rights Committee (UN CPCR) decision, which recommended the authorities of Kyrgyzstan to release Azimjan Askarov and provide him with access to justice. In July 2016, the Supreme Court of the Kyrgyz Republic sent the case to the Chuy Regional Court for reconsideration of the appeal decision, following the appeal filed by Mr. Askarov in the aftermath of the UN CPCR decision.

During the re-trial in appeal, which took place from October 4, 2016 to January 24, 2017, State prosecution asked to leave the sentence unchanged, lawyers argued that their client was innocent and reminded that confessions were given under torture. Despite that, the Court decided not to take into consideration the UN expert body recommendations and maintained the original appeal verdict.

In the framework of the re-trial in appeal, the Observatory for the Protection of Human Rights Defenders, a partnership of FIDH and the World Organisation Against Torture (OMCT), carried out two international missions to Bishkek to monitor several of the hearings. The Observatory also recalls that it has been following the case closely since 2010.

Lawyer Kirill Koroteev, the trial observer mandated by the Observatory, as well as FIDH member organisations in Kyrgyzstan, Bir Duino Kyrgyzstan and Kylum Shamy, who were present during all hearings of the retrial in appeal observed multiple procedural violations, pressure on Askarov's lawyers and defense witnesses, inequality of arms and other violations of the rights of the accused, in breach of Kyrgyzstan's international human rights commitments.

## Who Is Azimjan Askarov And What Are The Reasons For His Retrial ?

Azimjan Askarov, an ethnic Uzbek community rights activist in Bazar-Korgon (a town in the Jalal-Abad region of the Kyrgyz Republic), founded the human rights NGO *Vozduh* (Air) in 2002 to investigate police brutality. He was arrested on June 15, 2010, in the immediate aftermath of violent inter-ethnic confrontations opposing Kyrgyz and Uzbek communities in South Kyrgyzstan<sup>1</sup>. He was charged with participating in mass unrest, inciting ethnic strife, illegal weapons possession, complicity in the murder of police officer Myktybek Suleimanov, attempted murder of other police officers and incitement for taking hostage a mayor. However, Azimjan Askarov argues that he was not present on the bridge where the altercation and death of Mr. Suleimanov occurred. His claim was corroborated by several testimonies. Accordingly, the Observatory as well as a number of NGOs and international stakeholders have expressed legitimate fears that the latter's sentencing was actually aimed at sanctioning his human rights activities.

On September 15, 2010, the Bazar-Korgon District Court found him guilty as charged and sentenced him to life imprisonment in a trial that was marred by multiple irregularities and human rights violations. Despite international outcry over reports of torture of Azimjan Askarov, harassment and violence against his lawyers and family members, and violations of the right to effective legal defence, the verdict was later upheld by the Jalal-Abad Regional Court and by the Supreme Court.

From the very beginning of the judicial proceedings, the case against Azimjan Askarov, built on testimonies extracted under torture and on the basis of testimonies of Kyrgyz police officers whose work was under scrutiny by Azimjan Askarov, was marked as politically motivated. Aside from

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1. Joint FIDH, Human Rights Movement "Bir Duino Kyrgyzstan" and Human Rights Centre "Kylum Shamy" report "Kyrgyzstan: A weak state, political instability: civil society caught up in the turmoil", October 4, 2010: <https://www.fidh.org/en/region/europe-central-asia/kyrgyzstan/Kyrgyzstan-A-weak-state-political>

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the fact that the targeting of Mr. Askarov may have been a response to his work of documenting human rights violations by the police and prison authorities in his home town, there are sound reasons to believe that the Interim Government of 2010 influenced the judicial process and its final outcome. During the Observatory's mission held in Bishkek and in Southern Kyrgyzstan in September 2015<sup>2</sup>, Mr. Kubatbek Baybolov, former Prosecutor General at the time of Mr. Askarov's conviction recounted that Interim President Roza Otunbayeva had instructed the Judiciary to sentence Azimjan Askarov to life imprisonment. He added that the elements in the criminal case failed to demonstrate Mr. Askarov's guilt.

An individual complaint was submitted by Azimjan Askarov's lawyers to the United Nations Human Rights Committee (UN CCPR)<sup>3</sup> and on March 31, 2016, the UN CCPR published its decision requesting the Kyrgyz authorities to release Azimjan Askarov, quash his conviction, provide him with a compensation and, if necessary, grant him a new trial that would comply with the international standards of a fair trial (see para. 10 of the UN CCPR Views<sup>4</sup>).

This decision was based on the findings of multiple violations of the International Covenant on Civil and Political Rights (ICCPR). In particular, the UN confirmed the allegations of torture and ill-treatment against Azimjan Askarov while in pre-trial detention - he was severely beaten during the first days after the arrest and his detention was not recorded until the day following the arrest. Conditions of detention fell short of the international requirements, in particular with regards to the lack of proper medical treatment and overcrowding. Finally, the UN CCPR established that Mr. Askarov's right to an effective defence was severely infringed since he had been prevented from meeting with his lawyers on several occasions, one of his lawyers was not duly informed of the dates of the hearings and was not able to attend some of them, he was not able to call witnesses on his behalf, the prosecution withheld evidence from the defence and the hearings were disturbed by disorder and violence caused by members of the public attending the trial.

In the aftermath of the UN decision, on July 11 and 12, 2016, the Supreme Court heard the appeal that had been filed by Azimjan Askarov's lawyers under Article 41.2 of the Constitution specifying that in cases where international human rights bodies find a violation of applicable treaties, the Kyrgyz authorities shall provide remedy to the individual. The Kyrgyz Code of Criminal Procedure (CCP) provides that the finding by an international human rights body of a violation of the international human rights treaties to which the Kyrgyz Republic is a party shall be "new circumstances" that warrant the reopening of criminal proceedings.

It is important to emphasise that the Supreme Court, deciding on the application to reopen the proceedings, has the power – and indeed the obligation – of quashing the conviction and/or other judgments in the case, with or without remitting the case for a new hearing before a lower court. Quashing the conviction means immediate release of the defendant.

Instead of quashing Azimjan Askarov's conviction and immediately releasing him, the Supreme Court decided remitting the case before an appeal court. Furthermore, in July 2016 ahead of the hearing in the Supreme Court, Azimjan Askarov was transferred from the Colony No. 47 where he was serving his term to the Remand Centre No. 1 where he has been jailed throughout the trial, in very poor conditions. Detained in a basement, in a cell with insufficient lighting, he slept on a concrete sleeping berth until he was provided with an inflatable mattress by his relatives on October 18, 2016. Deterioration of detention conditions further worsened his already weak health condition.

The Observatory alerted the international community of his worrying health condition on several occasions. Mr. Askarov, aged 65, was diagnosed with severe heart diseases such as angina, coronary artery trunk, left bundle branch block, disorders of the cardiovascular system, as well as liver problems such as Pasternatzky's symptom, hepatitis, and gall bladder disease. In addition, he suffers from severe headaches and dizziness. He is also very affected by painful joints, in particular in his knees as well as his lumbar area, which is worsened by cold.

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2. See the Observatory Mission Report, *Kyrgyzstan at a crossroads: shrink or widen the scene for human rights defenders*, June 2016.  
3. A body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights (ICCPR), a multilateral treaty adopted by the UN General Assembly on December 16, 1966 and ratified as of today by 168 countries, including the Kyrgyz Republic (ratified in 1994). The Optional Protocol to the ICCPR, ratified by Kyrgyzstan in 1994, empowered the UN CCPR to receive individual complaints on violations of rights established in the ICCPR by States.  
4. Views adopted by the Committee under Article 5(4) of the Optional Protocol, concerning communication, April 31, 2016, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/116/D/2231/2012&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/116/D/2231/2012&Lang=en).

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Furthermore, immediately after the publication of the UN CCPR decision on Mr. Askarov, Kyrgyz decision makers, including Mr. Tabaldiev, Advisor to the President and former Chairman of the State Committee on National Security<sup>5</sup>, called for the abolition of Constitutional Provision 41.2. In July 2016, the Parliament made public a bill introducing major constitutional changes, including the repeal of Article 41.2. The initiative to introduce constitutional changes was widely criticised by the international community<sup>6</sup> and Kyrgyz civil society organisations<sup>7</sup>. On December 11, 2016, however, the constitutional amendments were adopted during a referendum, resulting in the effective repeal of Article 41.2 which established the primacy of international law into the domestic legal system.

## July 2016 Supreme Court Hearing: Decision Fell Short of Kyrgyzstan's International Obligations

### **Bench of judges:**

Chair: Kakchekei Esenkanov

Judge-Rapporteurs: Lepes Temirbekov, Kanybek Bokoev

Following the hearings on July 11 and 12, 2016, the Supreme Court ruled to remit Askarov's case before an appeal court (Chuy Regional Court). The latter decision falls short of the implementation of the UN recommendation to release Mr. Askarov, quash his conviction and, if necessary, grant him with a new fair trial. Furthermore, the hearings held in the Supreme Court on July 11 and 12 fell short of other international standards and obligations under human rights law:

### *Restrictions placed on access to the courtroom*

The hearings held before the Supreme Court on July 11 and 12, 2016 cannot be said to have been public: international observers, ambassadors and diplomats were allowed into the courtroom on the condition of prior notice and approval by the Ministry of Foreign Affairs (MFA). Those not on the MFA list were not allowed in the Supreme Court building, even if they had notified the MFA of their intention to attend beforehand. Only representatives from international organisations who had been approved in advance by the executive authorities were allowed inside the Supreme Court building.

Once in the courtroom, the observers and the public were not allowed to choose their seats, but they were directed to specific seats by the court personnel. Foreign visitors were seated in the courtroom separately.

### *Inequality of arms*

Contrary to victims (nine police officers and relatives of the deceased police officer Myktybek Suleimanov), Mr. Askarov was not able to attend the Supreme Court hearing. While neither the UN CCPR's Views, nor the Kyrgyz Code of Criminal Procedure provide for the participation of criminal defendants in hearings limited to the issue of reopening the proceedings, the hearing in the Supreme Court violated the principle of equality of arms. It is important to emphasise that not only the Supreme Court adjourned the proceedings to July 12, 2016, to ensure the participation of the victims, but the victims were also able to make statements and to attend despite having violently interfered with the course of the hearing and insulted Mr. Askarov, his lawyers and his lay defender Tolesan Ismailova. The victims even attempted to assault Mr. Askarov's legal defence team, especially Mr. Toktakunov and Ms. Ismailova before the police present in the courtroom intervened to stop them. However, the assaulters were not taken out of the courtroom, and continued shouting abuses in Russian towards Mr. Askarov's lawyers, especially towards Ms. Ismailova.

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5. "Tabaldiev: the Constitution needs targeted amendments to increase national security", April 28, 2016, [http://www.vb.kg/doc/338992\\_tabaldiev\\_v\\_konstitucii\\_nyjny\\_tochechnye\\_izmeneniia\\_v\\_celiah\\_nachezopasnosti.html](http://www.vb.kg/doc/338992_tabaldiev_v_konstitucii_nyjny_tochechnye_izmeneniia_v_celiah_nachezopasnosti.html) (in Russian only).

6. "Preliminary Joint Opinion on the Draft Law "On Introduction of Amendments and Changes to the Constitution", August 29, 2016, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2016\)009-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2016)009-e)

7. "Legal analysis of the proposed constitutional amendments in Draft Law dated September 23, 2016", <http://adilet.kg/ru/news/full/197> (in Russian only).

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*Lack of compliance with the UN decision*

In its decision, the UN CCPR concluded that:

*"the State party is obligated, inter alia, to take appropriate steps to immediately release the author; quash the author's conviction and, if necessary, conduct a new trial, in accordance with the principles of fair hearings, presumption of innocence and other procedural safeguards; and provide the author with adequate compensation"*<sup>8</sup>.

However, the July 2016 Supreme Court's decision to remit the case before an appeal court allowed the Supreme Court to keep the Bazar-Korgon District Court judgment and sentence intact and to completely avoid the discussion on the very possibility of release. To date, Mr. Askarov remains in detention pursuant to a conviction by the district court. The Supreme Court did not address at all the UN CCPR ruling.

It is also unclear how the appeal proceedings can remedy the violations highlighted in the UN CCPR decision: the appeal court's task is to assess the legality and the merits of the first-instance court judgment (Articles 341, 349–353 of the Code of Criminal Procedure). The appeal court is not tasked by law to provide the remedy under the ICCPR.

The way the Supreme Court hearing was conducted, including the fact that the bench of judges tolerated interruptions by the victims, verbal attacks and their attempts to physically attack the defence, only confirms the UN CCPR findings as to the unfair nature *per se* of these trials, which were held in a highly violent environment<sup>9</sup>.

## New Appeal Trial Before the Chuy Regional Court from October 4, 2016 to January 24, 2017

The proceedings took place before the Chuy Regional Court every Tuesday from October 4, 2016 to January 24, 2017, with several adjournments. Multiple violations of due process and fair trial were observed by the trial observer mandated by the Observatory and by FIDH member organisations in Kyrgyzstan present during the hearings.

### **Bench of judges:**

Djunushpaev Kadyk Karybaevich, Deputy Chairman of Chuy Regional Court, Chairman of the Chuy Regional Court Chamber on the case of Azimjan Askarov

Djumagulov Azamat Kadyrbekovich, Deputy Chairman on criminal administrative cases

Isaev Nurbek Rustambekovich, Judge

**Prosecution** was represented by Messrs. Toktakhunov Kumar, Orozbek Esen and Kamalidinov Rashid.

Azimjan Askarov was represented by Mr. Nurbek Toktakunov, Mr. Valerian Vakhitov and his assistant Aidar Sydykov and Ms. Toleskan Ismailova, Mr. Askarov's lay defender.

### *Lack of compliance with the UN decision*

The Chuy Regional Court failed to fully implement the UN CCPR recommendations. More particularly, as specified by the UN CCPR experts, Mr. Askarov should have been released immediately. Mr. Askarov was however kept in detention, despite multiple requests filed by the defence, throughout the whole process.

During the new appeal that cannot be considered as a new trial *per se* (as the first instance decision was maintained), the principles of fair trial, and other procedural safeguards were not respected (see the sections on inequality of arms and intimidation of witnesses below).

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8. See para. 10.

9. See Observatory Press Release, July 13, 2016.

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In their decision, the UN CCPR experts took into consideration *"the author's allegations that he was, on a number of occasions, tortured and otherwise mistreated. The Committee notes that the findings of the medical forensic examinations conducted by independent experts are consistent with other evidence suggesting that the author was subjected to acts of torture. (...) The Committee considers that, in the circumstances of the present case, and in particular in the light of the State party's inability to explain the visible signs of mistreatment that were witnessed on a number of occasions, due weight should be given to the author's allegations"*<sup>10</sup>.

In spite of the UN CCPR findings in that regard, the judges of the Chuy Regional Court again failed to investigate torture claims.

The defence provided evidence that following Mr. Askarov's arrest on June 15, 2010, and detention in the same police station where the murdered police officer Myktybek Suleimanov had worked, Azimjan Askarov was repeatedly beaten. At one point, he was repeatedly hit on the head with a pistol and forced to clean up his own blood. The police also threatened to have his wife and daughter raped in front of him. His detention was not registered for nearly 24 hours, even though Article 95 of the Kyrgyz Criminal Procedure Code requires registration within three hours of detention.

Ms. Aziza Abdirasulova, Head of "Kylým Shamy" who was the first to visit Mr. Askarov in detention a week after his arrest on June 15, 2010, stated before the Chuy Regional Court on November 15, 2016 that in June 2010 she had detected marks of torture on Azimjan Askarov. We recall that Mr. Askarov not only has had serious injuries but at least for a week following his detention, he had not been allowed private meetings with his lawyers or with human rights activists to relate his allegations of torture. During this time, he was interrogated at least 11 times as the police attempted to coerce him into testifying against leaders of the Uzbek community in Kyrgyzstan. No criminal investigation into the allegations of torture has ever taken place. In justifying the denial of the requests to investigate, on November 29, 2016, the prosecution repeatedly referred to Mr. Askarov's written statements made while in police custody that he had no complaints. These statements, according to Mr. Askarov and his representatives, were made as a result of threats of further torture.

On December 20, 2016, Azimjan Askarov in his final testimony reiterated that he was illegally detained during the first day of arrest in 2010, and that he was tortured and threatened.

#### *Pressure, intimidation and surveillance of defence witnesses*

On November 1, 2016, the court heard six witnesses called by the defence who had been convicted of prison terms on charges of incitement of violence and mass disorder following the ethnic clashes that broke out in June 2010: M. Mamadalieva, M. Kochkorov, Sh. Mirzalimov, D. Rozubaev, E. Rasulov, I. Abduramov. They confirmed having been tortured, ill-treated and blackmailed by police officers in June 2010 in view of forcing them to testify against Azimjan Askarov. Some of the witnesses testified their fear of giving more detailed testimonies about the acts of torture and what they knew about the events in June 2010. During her interrogation on November 1, 2016, M. Mamadalieva claimed having been warned by an individual in the courtroom to stop her statement. No action was undertaken by the judges to ensure a safe environment for witnesses. Furthermore, despite several motions filed by the defence, no action was taken by the judges regarding the allegations of torture and acts of pressure and intimidation exercised on the witnesses.

In November and December 2016, Ms. Tolekan Ismailova, who acted as lay defender for Azimjan Askarov, and Ms. Aziza Abdirasulova, who testified in the appeal retrial as a witness, and Mr. Askarov's legal defence team were subject to increasing pressure, verbal attacks and surveillance. Before the opening of the new appeal before the Chuy Regional Court and throughout the retrial in appeal, they were slandered in the Kyrgyz media. They were depicted as traitors and persons paid by the Western powers to destabilise the situation in Kyrgyzstan, while on social networks a petition calling to strip Ms. Ismailova and Ms. Abdirasulova of their Kyrgyz citizenship was launched.

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<sup>10</sup>. See para. 8.2.



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Ms. Aziza Abdirasulova testified on November 15, 2016 that Ms. Kubatbek Baybolov, the Prosecutor General of Kyrgyzstan at the time of Mr. Askarov's sentencing, had shared with her the information about the order of the Interim President Roza Otunbayeva to sentence Mr. Askarov to life imprisonment. This information was also submitted by Mr. Baybolov to the Observatory's fact-finding mission in September 2015 (see above). Mr. Askarov's lawyers requested the Court to call Mr. Boybolov to testify but he failed to appear in court.

Both Ms. Aziza Abdirasulova and Ms. Tolekan Ismailova discovered that they were being monitored by the security services. On December 6, 2016, during a lunch break, Ms. Aziza Abdirasulova, Ms. Tolekan Ismailova and lawyers of Azimjan Askarov went to a nearby cafe to discuss the defence strategy. After the lunch was over, a phone was discovered by them near their table, with a Dictaphone function turned-on. After taking the phone with her, Ms. Aziza Abdirasulova reported having been followed by a car to her office where she locked herself up. The phone had indeed registered the entire conversation held in the café on Mr. Askarov's defence strategy, but also contained records of other conversations of high-ranking officials and phone numbers of intelligence service officials. Ms. Aziza Abdirasulova shared this information with the press and transmitted the phone to the Kyrgyzstan's Ombudsman's office that opened an inquiry into the allegations of surveillance on December 12, 2016<sup>11</sup>.

The next day, on December 7, 2016, Ms. Aziza Abdirasulova was hospitalised for urgent treatment after a stroke due to the stress.

#### *Inequality of arms disfavouring Mr. Askarov's defence*

Several requests from the defence, including the request for additional investigation of the case, were rejected during the hearings.

All defence motions not to keep Azimjan Askarov in a metal cage during the court hearings were dismissed.

The court also failed to respond to Mr. Askarov's request made during the first hearing on October 4, 2016, to view the video proving that on the day of the police officer's murder he was not present on the scene of the incident.

The first court hearings were marked by verbal attacks against Mr. Askarov, his lawyers and the Uzbek community in Kyrgyzstan, in general by the wife and relatives of the deceased police officer. Although physical confrontation was avoided, verbal attacks continued throughout the process with no measures being undertaken by the court to ensure a conducive atmosphere during the proceedings.

It is important to emphasise that during the new appeal, Azimjan Askarov was forced to wear a jacket bearing the inscription «ЛI» («ЛIIC» that stands for «Life imprisonment») despite multiple defence motions that it presupposed. Azimjan Askarov's guilt before a ruling has been made.

The prosecution was represented by three prosecutors with ranks equal to captain, major and lieutenant-colonel who were wearing military uniforms during the hearings.

The defence made a motion calling to witness nine relatives of Mr. Askarov, including his wife Ms. Khadicha Askarova. They all travelled 500 km to attend the hearing on November 1, 2016. The Court accepted to call to witness only one of them and did not even allow all the others, including Mr. Askarov's wife, to attend the hearing, in violation of national legislation and international norms of fair trial.

We recall on the contrary that the wife of the deceased police officer Myktybek Suleimanov was present during all the hearings she wanted to attend (on October 4 and October 11, 2016, and previously in the Supreme Court in July 2016). Her verbal attacks and threats against Mr. Askarov and his lawyers and lay defender Ms. Tolekan Ismailova, including threats of murder when testifying in Supreme Court in July, were never sanctioned by the judges.

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11. "Ombudsman suggested creating a Commission to inquire into the facts of surveillance of Aziza Abdirasulova", December 12, 2016, [http://www.vesti.kg/index.php?option=com\\_k2&view=item&id=43721:ombudsmen-predlozhit-sozdat-komissiyu-pol-rassledovaniyu-slezhki-za-azizoy-abdirasulovoy&Itemid=83](http://www.vesti.kg/index.php?option=com_k2&view=item&id=43721:ombudsmen-predlozhit-sozdat-komissiyu-pol-rassledovaniyu-slezhki-za-azizoy-abdirasulovoy&Itemid=83) (only in Russian).

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During the re-trial in appeal, Azimjan Askarov's brother Khakim Askarov was also not allowed to witness. He was detained and beaten on June 15, 2010, while he was trying to establish the whereabouts of Azimjan Askarov. The acts of torture Mr. Khakim Askarov was subject to and his subsequent handicap were testified by his wife Turdikhan Askarova, the only relative of Mr. Askarov who was allowed to witness in Chuy Regional Court.

*Due process violations*

All hearings were held in a conference hall of the Security Guard department of the Kyrgyz Penitentiary Service, which is not designed for court hearings. Mr. Askarov was brought to the hearings handcuffed and held in a metal cage, despite the defense repeated motions.

Quality interpretation from and to Uzbek language was not provided by the court. During the hearing held on November 8, 2016, the interpretation by a professional interpreter commissioned by the court was so inaccurate and low quality that a journalist from *Voice of Freedom* present at the hearing was allowed by the judge to interpret the testimony of Azimjan Askarov's sister-in-law instead.

## Pressure on Azimjan Askarov's Family

Since the arrest of Azimjan Askarov on June 15, 2010, and up to date, the authorities have exerted pressure on his family.

Mr. Askarov's wife Ms. Khadicha Askarova has faced surveillance and harassment by the authorities, in particular during all the court hearings and during the prison visits.

As mentioned above, Azimjan Askarov's brother was arrested on June 15, 2010 while searching for his disappeared brother. The Askarov family was prevented to attend proceedings in 2010 due to pressure exerted on them. They were also prevented from attending the hearings in 2016, neither to give the testimonies, with an exception of Mr. Askarov's sister-in-law (see above).

Moreover, just after the UN CCPR decision, intimidation was intensified by a threat to lose Mr. Askarov's family residence where his wife lives. Confiscation of Azimjan Askarov's property was ordered by the Bazar-Korgon District Court on September 15, 2010 as part of Mr. Askarov's verdict. However, the Penal Enforcement Code of Kyrgyzstan prohibits confiscating the main residence of a convicted person's family members. Azimjan Askarov's house, where his wife lives, is their only residence and therefore according to Kyrgyz law, cannot be confiscated.

On May 25, 2016, one month after the UN CCPR decision, the court bailiffs and representatives of the State property Fund of Kyrgyzstan (SPFK) led a visit at Azimjan Askarov's house for the purpose of confiscation of the property into the possession of the State, inspected the property and took photos thereof. Upon Mr. Askarov's lawyer's request for the legal basis of such a visit, the latter was informed of a decision by the Office of Court Bailiffs of Bazar-Korgon district dated March 3, 2016 to transfer Mr. Askarov's property to the State. Mr. Askarov's legal counsel appealed the decision and obtained its reversal by the State property Fund of Kyrgyzstan on September 26, 2016. His lawyer and Azimjan Askarov were informed of the decision to repeal the confiscation only in the beginning of December 2016, when Mr. Askarov's re-trial had been going on for already two months.

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## Conclusion

The July 2016 Supreme Court decision to remit the case before an appeal court fell short of the implementation of the UN recommendation to release Mr. Askarov, quash his conviction and, if necessary, grant him a new fair trial. On July 12, 2016, the Supreme Court quashed the appeal judgment of the Jalal-Abad Regional Court and its own supervisory review judgment and sent the case for an appeal hearing before the Chuy Regional Court, sitting in the capital. The power of the Supreme Court to alter the territorial jurisdiction of the appeal courts by sending the case for a new appeal hearing before an appeal court different from the one that heard the original appeal is limited by the Kyrgyz Code of Criminal Procedure (Articles 70 and 71) to the cases where all the judges in the court that has territorial jurisdiction are recused or otherwise not impartial. While some judges of the Jalal-Abad Regional Court may be recused for having already heard the case, it is a bold statement of the Supreme Court that all the judges in that region are not impartial.

The hearing held in the Supreme Court on July 11 and 12 fell short of other international standards and obligations under human rights law, such as the right to a public hearing and the respect of equality of arms. The alleged victims' attempts to assault Mr. Askarov's legal defence team were not sanctioned by judges hereby creating an intimidating atmosphere during the hearing. A physical confrontation was avoided after the intervention by the police present in the courtroom. However, the assaulters were not taken out of the courtroom, or otherwise obligated to guarantee a conducive environment during the trial proceedings.

The Chuy Regional Court heard the appeal of Askarov's case between October 4, 2016 and January 24, 2017. Multiple violations of due process and fair trial were observed by the trial observer mandated by the Observatory and by FIDH member organisations in Kyrgyzstan.

Azimjan Askarov was not released as required in the CCPR decision and kept in a metal cage throughout the process.

Six witnesses called by the defence on November 1, 2016, claimed having been tortured, ill-treated and blackmailed by police officers in June 2010 in view of forcing them to testify against Azimjan Askarov. No action was taken by the judges regarding the allegations of torture and acts of pressure and intimidation exercised on the witnesses.

Some of the witnesses testified their fear of giving more detailed testimonies about the acts of torture and what they knew about the events in June 2010. While giving her testimony in courtroom on November 1, 2016, one witness stated having been warned by an individual in the courtroom to stop her statement. No action was undertaken by the judges to ensure a safe environment for witnesses.

Pressure against Azimjan Askarov's family mounted following the publication of the CCPR Views in April 2016. In May 2016, the court bailiffs and representatives of the State property Fund of Kyrgyzstan (SPFK) visited Azimjan Askarov's house in view of confiscating it. However, confiscation of Azimjan Askarov's house would be illegal under Kyrgyz law.

Defence witness Ms. Aziza Abdirasulova and Askarov's lay defender Ms. Tolekan Ismailova experienced mounting surveillance and pressure during Mr. Askarov's trial in appeal. On December 6, 2016, Ms. Aziza Abdirasulova, Ms. Tolekan Ismailova and lawyers of Azimjan Askarov reported having suffered illegal acts of surveillance by intelligence services.

The Observatory thus considers that the judicial response given by the authorities of Kyrgyzstan to the UN CCPR Views has failed to conform itself to international human rights standards binding Kyrgyzstan and has, during the new appeal proceedings, committed new violations of Mr. Askarov's right to a fair trial.

The new appeal sentence to life imprisonment announced on January 24, 2017 by Chuy Regional Court thus contravenes the international obligations of Kyrgyzstan. The right of Azimjan Askarov to a fair trial has again been violated and he should be immediately and unconditionally released.

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## Recommendations

In view of these elements, the Observatory for the Protection of Human Rights Defenders formulates the following recommendations:

**To the Government of Kyrgyzstan to:**

- Fully implement the decisions and recommendations of United Nations (UN) treaty bodies and in particular:
  - Immediately release Azimjan Askarov, quash his conviction and provide him with adequate compensation (UN CCPR Views concerning communication No. 2231/2012);
  - Undertake a full, effective and independent investigation into the claims of torture made by Azimjan Askarov;
  - Ensure that human rights defenders and independent lawyers are protected from intimidation or violence as a result of their activities; ensure the prompt, impartial and thorough investigation of all allegations of harassment, torture or ill-treatment of human rights defenders, and prosecute and punish the perpetrators with appropriate penalties.
- Ensure that Mr. Askarov's right to family and lawyer visits is fully respected in accordance with the procedures and under the conditions stipulated by Kyrgyz law and international human rights standards; ensure that representatives of Kyrgyz and international NGOs and diplomatic missions have access to Mr. Askarov in prison and provide him with adequate medical care;
- Put an end to any kind of harassment - including at the judicial level - against all human rights defenders in Kyrgyzstan;
- Develop all legislative measures necessary to guarantee the full implementation of the decisions of international human rights bodies;
- Undertake a full, effective and independent investigation into the claims of torture made by the six defence witnesses heard by the Chuy Regional Court on November 1, 2016 who claimed having been tortured to force them to testify against Azimjan Askarov;
- Undertake a full, effective and independent investigation into the claims of surveillance against Ms. Aziza Abdirasulova and Azimjan Askarov's defence team;
- Undertake comprehensive justice administration reforms with an aim to ensure conformity with international norms guaranteeing equality of arms, fair trial and protection of parties to the trial;
- Immediately schedule a visit with the UN Special Rapporteur on the Situation of Human Rights Defenders and the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association;
- 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: Article 1, which states that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels"; Article 5, which underscores the right of every individual to form, join, and participate in non-governmental organisations ; and Article 12.2, which provides that the State shall "take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of his or her rights".

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**To the international community to:**

- Continue to call on the Kyrgyz authorities to implement the UN CCPR's decision on Azimjan Askarov;
- Request and conduct visits of Azimjan Askarov until his release.



FIDH and OMCT are both members of ProtectDefenders.eu, the European Union Human Rights Defenders Mechanism implemented by international civil society. This report was produced notably within the framework of ProtectDefenders.eu.

FIDH and OMCT would like to thank the Republic and Canton of Geneva, the Agence Française de Développement (AFD) and the European Union for making this report possible. Its content is the sole responsibility of FIDH and OMCT and should in no way be interpreted as reflecting the view(s) of the supporting institutions.



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### **Establishing the facts**

Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed rigorous and impartial procedures to establish facts and responsibility.

Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1,500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

### **Supporting civil society**

Training and exchanges

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

### **Mobilising the international community**

Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

### **Informing and reporting**

Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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17 passage de la Main-d'Or - 75011 Paris - France

Tel: + 33 1 43 55 25 18 / Fax: + 33 1 43 55 18 80 / [www.fidh.org](http://www.fidh.org)



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**Created in 1985, the World Organisation Against Torture (OMCT) works for, with and through an international coalition of over 200 non-governmental organisations - the SOS-Torture Network - fighting torture, summary executions, enforced disappearances, arbitrary detentions, and all other cruel, inhuman and degrading treatment or punishment in the world.**

### **Assisting and supporting victims**

OMCT supports victims of torture to obtain justice and reparation, including rehabilitation. This support takes the form of legal, medical and social emergency assistance, submitting complaints to regional and international human rights mechanisms and urgent interventions.

OMCT pays particular attention to certain categories of victims, such as women and children.

### **Preventing torture and fighting against impunity**

Together with its local partners, OMCT advocates for the effective implementation, on the ground, of international standards against torture.

OMCT is also working for the optimal use of international human rights mechanisms, in particular the United Nations Committee Against Torture, so that it can become more effective.

### **Protecting human rights defenders**

Often those who defend human rights and fight against torture are threatened. That is why OMCT places their protection at the heart of its mission, through alerts, activities of prevention, advocacy and awareness-raising as well as direct support.

### **Accompanying and strengthening organisations in the field**

OMCT provides its members with the tools and services that enable them to carry out their work and strengthen their capacity and effectiveness in the fight against torture.

OMCT presence in Tunisia is part of its commitment to supporting civil society in the process of transition to the rule of law and respect for the absolute prohibition of torture.

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8 rue du Vieux-Billard - PO Box 21 - CH-1211 Geneva 8 - Switzerland

Tel: +41 22 809 49 39 / Fax: +41 22 809 49 29 / [www.omct.org](http://www.omct.org)



### Activities of the Observatory

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims.

With this aim, the Observatory seeks to establish:

- a mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- international missions of investigation and solidarity;
- a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- the preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- sustained action with the United Nations and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by FIDH and OMCT: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".

**To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger. This system, called Emergency Line, can be reached through:**

E-mail: [Appeals@fidh-omct.org](mailto:Appeals@fidh-omct.org)

**FIDH** Tel: + 33 1 43 55 25 18 Fax: + 33 1 43 55 18 80

**OMCT** Tel: + 41 22 809 49 39 Fax: + 41 22 809 49 29