

To: The judicial board on criminal cases
and administrative offences
of the Supreme Court of the Kyrgyz Republic

From: Lawyer Mr. Toktakunov Nurbek, on behalf of
Mr. Askarov Azimzhan, who has been convicted
and is currently serving his statement in the
correctional facility # 47 in Bishkek city

Supervisory complaint on the verdict of the Bazar-Korgon District Court,
held on September 15, 2010,
and the verdict of Jalal-Abad Regional Court,
held on November 10, 2010

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By the verdict of Bazar-Korgon District Court that was held on September 15, 2010, Mr. Askarov was found guilty of committing crimes under § 1, 3 of Part 2 of Article 227., (28, 30), part 1, Article 241., § 1, part 2 of Article 299, Part 1, 2, 3, Article 233, Art. 340 (30) of the Criminal Code and in the aggregate was sentence to life imprisonment. The verdict was appealed by all defendants in the case, including Mr. Askarov, but Jalal-Abad Regional Court after examining the appeal of this case upheld verdict without changes and dismissed complaint of Mr. Askarov's lawyers.

I believe that the above verdicts of local courts shall be repealed, since there were mistakes in the application of the law and assessing the evidence.

Regarding convictions under paragraph 1, 3 of Part 2 Article 227 (28, 30)

(Attempts of hostage-taking)

According to investigators, during the ethnic clashes on the border bridge near the village of Chek on June 12, 2010 Mr. Askarov called refugees, fleeing Bazar-Korgon Region, to take Mr. Artykov, the mayor of Bazar-Korgon district, in hostage in order to force the military border guards of the Republic of Uzbekistan to ensure their easily pass through the border and to force Mr. Artykov to refrain from attempts to return the Uzbek population back to Bazar-Korgon village.

The motive of taking Mr. Artykov in hostage, as presented by the investigators, is contrived and pointless. It is obvious that taking Mr. Artykov in hostage would not force Uzbek border guards to let refugees across the border, as in the case of unauthorized attempts to pass through the border, not only Mr. Artykov, but also the person who seized him hostage would be under the threat of being killed. Due to the wide spread information throughout the country about the numerous victims of an ethnic violence, the desire of Uzbek population of Bazar-Korgon to leave the territory of Kyrgyzstan is understandable. According to the testimony of

Mr. Askarov, given in the court, he asked Mr. Artykov, as a government representative, any measures of security guaranteed to Uzbek populations, but he could not give such guarantees. Thus the prosecuting bodies could not fully provide the burden of proof, and therefore the presence of a crime.

Numerous witnesses, who could confirm that Mr. Askarov did not attempt to take Mr. Artykov in hostage, failed to appear in court due to the threats by the relatives and friends of the deceased Mr. Sulaymanov. Imam of Bazar-Korgon Mosque Mr. Tazhidin and Kyrgyz border guards were not questioned by the court or investigators, although the mayor, Mr. Artykov testified that they also were witnesses of the events. Court of the first instance and appellate court did not take any action to secure witnesses of the defendants in order to fully review the case and rendered a decision based solely on the testimony of witnesses, the driver Mr. Kochorov and bodyguard of Mr. Tashiev, which are subordinates of the Mayor Mr. Artykov.

Regarding convictions under part 1 of Article 241

(Possession of ammunition)

In accordance with the case Mr. Askarov's house was searched on June 17, 2010 in the course of which 10 bullets from "Makarov" handgun were seized. The search for unknown reasons was conducted without Mr. Askarov's participation, although he was at that time in custody of the investigation. After close review, the material regarding which investigator searched his house was not found in the protocol; later search protocol of 21 pages was located on the second volume of the protocol. In the course of appellate review, it became clear that the search protocol was on the 70th page of the case protocol and there are already some data on the person, who conducted a search. In addition, the prosecution did not invite witnesses that were present during the search, although the burden of proof in criminal cases lies on the prosecuting authorities. From the record it appears that the items seized during the search were not packed and sealed, so there is no evidence that items submitted to a ballistic expertise were seized during a search. These facts suggest that the search was not conducted, and charges with possession of ammunition were brought on the basis of falsified case materials.

In accordance with Paragraph 3 of Article 81 of the Criminal Procedure Code, evidences obtained in violation of the Criminal Procedure Code, are unacceptable, considered unlawful and void and could not be considered as grounds for in a court decision.

Regarding convictions under paragraph 1 of Part 2 of Article 299

(Incitement of ethnic hatred)

The Court of first Instance and Appellate courts found Mr. Askarov guilty on inciting ethnic hatred with calls for violence, without any strong evidences and based solely on data obtained during the investigation, which took place with numerous and serious violations of the process. In both instances the courts did not obtain any testimony proving Mr. Askarov's guilt on inciting ethnic hatred and calling for violence. The court in its verdict refers to the testimony of witnesses and the defendant, Mrs. Mamadalieva, stating that Uzbek residents of Bazar-Korgon village have blocked the road with a trailer, but there were not any fact that Mr. Askarov fanned ethnic strife and called for violence. Under such circumstances the court had to acknowledge the

lack of a criminal act and justify Mr. Askarov in charges of committing an offense under paragraph 1 of Part 2 of Article 299 of the Criminal Code.

**Regarding convictions under Part 1, 2, 3 of Article 233, Article 340 (30)
(organization of mass disorders and complicity in the murder of police officers)**

The Court found Mr. Askarov guilty in organizing mass disturbances and complicity in the murder of policemen, Mr. Sulaymanov, based on the testimony of seven police officers, which testified that Mr. Askarov, while being on a bridge over the river Kara-Unkur in the village of Bazar-Korgon with 500-600 Uzbek residents, at the time of arrival of 15 police officers of Bazar-Korgon District police station, ordered to "take chief of police in hostage and kill other police officers." Other police officers testified that they did not hear what Mr. Askarov was saying. Four officers of Bazar-Korgon Secret Service District Department, who were also present there, did not hear that Mr. Askarov was giving any orders.

Accusatory evidence by the police could be explained by the fact that Mr. Askarov for a long time was engaged in human rights activities in the Bazar-Korgon district. He had repeatedly elicited a variety of abuses and violations of law by police officers of Bazar-Korgon police department. It is necessary to outline one case when two citizens Mr. Mamajanov and Mr. Rejapov under torture confessed in murder of a woman, Mr. Askarov later revealed that a woman, was, in fact, alive. This incident, which occurred in 2007, has received a great attention of the public and what's significant is that nobody from the police officers, who managed to get a confession, was punished.

The Court also relies on the testimony of the defendant Mr. Rasulov and the witness Mr. Yuldashev stating that Mr. Askarov urged Uzbek citizens to gather in crowds on the streets. But even if we take into account these indications, it can't be a proof that Mr. Askarov organized riots, as in a situation where there were rumors around the country about the victims of ethnic conflict, and the authorities and the police were demoralized and unable to ensure public safety, it is quite normal to attempt ensuring public safety measures such as blocking the streets or building barricades.

In addition, law enforcement agencies had to report on the arrest of any of the leaders who organized the riots. The fact is that real leaders who were involved in organizing riots, arming and funding criminal elements were able to safely escape abroad. Many experts believe that it happened because of demoralized and corrupt law enforcement officials.

Violation of the principles of fair trial

The main purpose of a fair trial is that the defendant has an equal opportunity, they are allowed to call witnesses in court, they have an ability to freely communicate with qualified lawyer, and their lawyers can freely exercise their duties. The court must be impartial and must review the case thoroughly, completely and objectively, considering the evidence in aggregate and taking into account the principle of presumption of innocence. All these principles laid down in Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which is ratified by the Kyrgyz Republic in 1994 and is an integral part of national law. In case of violations of the ICCPR determined by the UN Committee on Human Rights, the ICCPR State

party is obliged to restore the violated rights and currently a working group under the Ministry of Justice of Kyrgyz Republic is drafting a law on execution of the decisions of the UN Human Rights Council with respect to the Kyrgyz Republic. Therefore, there are references to the ICCPR in this section of the complaints, but we should note that the Criminal Procedure Code of the Kyrgyz Republic as a whole meets the requirements of the ICCPR and also contains a similar requirement in Chapter 2 and in some other sections of the Criminal Procedure Code.

In accordance with Paragraph 1 of Article 14 of the ICCPR, "Everyone has the right to a fair and public hearing by a competent, independent and impartial court in a criminal charge against him." Court hearing by Bazar-Korgon District Court did not meet the criterion "impartial" because ethnic conflict in June 2010 took place in southern Kyrgyzstan and it should have been disputed in northern courts. Initially, it was obvious that any court's actions to ensure the rights and freedoms of the accused Uzbek citizens was a direct threat to their safety and in with respect to the Bazar-Korgon District Court. Therefore, on August 23, 2010 under paragraph 3 of Article 70 and paragraph 3 of Article 242 of the Criminal Procedure Code I have requested the Jalal-Abad Regional Court to transfer the case to the Court of another district for a more objective hearing. However, the petition was not granted and the case was heard by travelling judge of Bazar-Korgon district in Nookan District Court. Biased attitude of Bazar-Korgon District Court Judge was confirmed in the whole course of the trial process and by the procedural violations by the judge of Bazar-Korgon district court Mr. Alymkulov.

On September 6, 2010, when four defendants entered the court room, it was evident that, defendants including Mr. Askarov had bruises on their faces. I have immediately asked to conduct medical examination in accordance with Article 303 of the Criminal Procedure Code and to provide opportunities to interview my client Mr. Askarov, as violence against the defendant may significantly affect his testimony on the case and implies the need for private meeting. The court decided to get back to this question later on the course of court hearing. The court did not ask the defendants how they got the injuries, and did not find out whether they had any complaints or statements. A decision to carry out inspection was made at the end of the day, after the convicts again visited Nookan police station and stated about non-violent reasons of their injuries, in other words they either slipped over or hurt themselves. Prosecuting bodies had to conduct an examination. The examination was conducted on the following day in Nookan police station. During the examination Mr. Askarov and other defendants said they have no claims and refused to conduct a forensic medical examination, and it was reported by the public prosecutor. On this basis, the question of injuries of the defendants has been closed.

Examination is a part of a judicial procedure to report any injuries. The court had to clarify how the defendant got those injuries, which, as noted above, has not happened. However, the medical examiner in court confirmed that Mr. Askarov has bruises on his face. Additionally, I took a photo of the defendant Mr. Askarov with a bruise under his left eye. Journalist of the radio "Azattyk" also made a picture of Mr. Askarov with a black eye; it was posted on their website www.azattyk.org.

My petition for a private conversation with Mr. Askarov was denied with reference to the bylaw regulating temporary detention center's schedule, which does not allow private conversation of the defendants with the lawyer contained in the detention center during a court examination. Such a rule is contrary to the requirements of the Criminal Procedure Code and the

Constitution on the right to protection and unhindered access to a lawyer and the court was not entitled to be guided by the bylaw.

Article 7 of ICCPR and article 22 paragraph 1 of the Constitution guarantees the inviolability from torture. At a time when prisoners do not have easy access to a lawyer, any allegations of torture may lead to new tortures. Therefore, if there are grounds to believe that the prisoner was tortured; the State must conduct an investigation even when the victim refuses to claims against law enforcement agencies and states that he hurt himself/herself. In a situation where the court and all parties see the visual injuries of the convicts, the court should immediately conduct examinations to ascertain the reasons of injuries and whether they have any complaints. Judge Mr. Alymkulov actually provided an opportunity to Nookan police station officer to influence the opinion of convicts on their injuries.

Throughout the trial a number of visitors and representatives of the plaintiff's party deliberately violated internal rules of the trial, threatened to kill the lawyer, shouted at the defendants when they were making a speech. The court failed to take effective measures to ensure order in the courtroom. Due to moral and psychological pressure during the trial lawyers had to be very careful in their arguments, and sometimes refuse to perform some duties. For example, lawyers of the defendant's party refused to invite the witnesses to testify because the court could not ensure their safety. In particular lawyer of Mr. Askarov decided not to invite witnesses, including Ms. Aziza Abdirasulova, which could confirm the fact that Mr. Askarov informed the authorities of impending riots and arming before the tragic events in southern Kyrgyzstan.

Thus, Mr. Askarov was in fact deprived of the possibility of inviting and questioning witnesses on his behalf under the same conditions as the plaintiff's party did", as set forth in part "e" of paragraph 3 of Article 14 of the ICCPR.

Appellant court did not give any assessments to above violations by the Court of First Instance.

Courts of both instances failed to consider and evaluate numerous violations of the criminal process in the course of the investigation:

1. Mr. Askarov was arrested on June 15, but the police report was issued on June 16. From June 15 to 16 arrest of Mr. Askarov was out of the established procedures, in violation of article 9 of ICCPR, paragraph 4 of Article 24 of the Constitution and Articles 95 and 97 of the Criminal Procedure Code. During the arrest in violation of Article 99 of the Criminal Procedure Code Mr. Askarov's relatives were not notified.

2. Mr. Askarov was detained in conditions with lack of access to a lawyer, without an opportunity to contact with relatives or to file a complaint. Access to lawyers has been difficult, since local residents, relatives and friends of the plaintiff's party were freely passing into the building of Bazar-Korgon police station and prevented our meetings with the defendants, the lawyers were threatened with physical violence. Police officers of Bazar-Korgon police station openly admitted that they could not provide security to lawyers in their police station. The prosecutor of Jalal-Abad Region has witnessed one of these incidents, after which Mr. Askarov

was transferred to a detention center of Jalal-Abad police station. But after that access to Mr. Askarov was difficult, as I could only see him with the permission of the investigating authorities in accordance with internal regulations and rules of detention centers, which clearly contradicts to notion of "unhindered". "Unhindered" implies that the lawyer can meet with their clients by showing an ID and the document certifying that the lawyer represents the interest of the convict. Such conditions as permission of the investigating authorities put the possibility of visiting with the clients in custody in dependence on the mood and the "will" of the investigator. For all the investigation process I spoke with Mr. Askarov alone for no more than 40 minutes, which is clearly insufficient to come up with an agreed position on this matter.

3. Lawyers of Mr. Askarov were denied in obtaining copies of records of investigative actions that must be brought to the accused and his lawyer in accordance with paragraph 7 of Part 3 of Article 48 of the Criminal Procedure Code until the end of the investigation. During the meeting, I demanded from the prosecutor of Jalal-Abad to present copies of search in the house of Mr. Askarov and protocols of Mr. Askarov's confrontations with witnesses of the plaintiff's party. I was explained that I may have access to these documents, but I could not copy them. But the right to review implies the right to obtain copies, especially when we are talking about investigative actions that took place with the participation of Mr. Askarov.

4. The investigating prosecutor's office did not investigate the facts of injuries of Mr. Askarov, which I have identified during a meeting with Mr. Askarov on June 22, 2010. The prosecutor's office of Jalal-Abad denied instituting a criminal proceeding, citing the testimony of Mr. Askarov that he was beaten by fellow inmates. These testimonies are explained by the fact that during the investigation he was kept in detention center of Bazar-Korgon police station, where worked the police officer, in murder of which Mr. Askarov is been accused. Mr. Askarov was in a vulnerable position when any allegations of torture could lead to further torture.

5. Thus, Mr. Askarov did not have enough time to communicate with his lawyer and prepare his arguments, he was long held in the detention center of Bazar-Korgon district police station, he was repeatedly tortured, during the investigation and trial he did not have any opportunity to invite and question witnesses, his lawyers could not fully work, because they were under the threat of violence themselves and at the same time any active actions of lawyers could exacerbate the situation of Mr. Askarov.

Based on the above, in accordance with Article 383, I ask to revoke the sentence of Bazar-Korgon District Court that was held on September 15, 2010 and the verdict of Jalal-Abad Regional Court that was held on November 10, 2010 and acquit Mr. Askarov.

Enclosures: - Original complaint in duplicates;
- Order.

Lawyer Toktakunov Nurbek