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## Tajikistan: Torture and other ill-treatment

### Briefing paper for the June 2015 EU-Tajikistan Human Rights Dialogue

In recent years the government of Tajikistan has taken some positive steps to prevent and eradicate torture. However, as recently as in his February 2015 report the United Nations (UN) Special Rapporteur on torture raised concern about continuing torture and ill-treatment and about impunity for the perpetrators. Continued international attention and political will of the Tajikistani authorities are needed to achieve lasting results.

This briefing paper briefly summarizes **key positive measures taken by the authorities in recent years**; it provides a brief **update on recent developments** pertaining to torture and other ill-treatment; and it highlights **three areas of concern that perpetuate torture in Tajikistan**: the persistent practice of incommunicado detention at the onset of detention, the lack of an independent investigation mechanism, and lenience towards torturers in domestic legislation. The briefing concludes with **key recommendations** that, if implemented, would significantly reduce incidents of torture and other forms of ill-treatment in the country.<sup>1</sup> In the annex you find summaries and recommendations regarding **three torture cases** that we urge you to raise with the Tajikistani government delegation during the European Union-Tajikistan Human Rights Dialogue.

Noteworthy positive steps taken by Tajikistan in recent years include introducing an article on “torture” in the Criminal Code of Tajikistan (Article 143-1) with a definition of torture that is in line with that contained in the Convention against Torture.<sup>2</sup> Five criminal cases have since been opened under Article 143-1.<sup>3</sup> In 2014, the families of two men who died in custody (Safarali Sangov and Bahromiddin

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<sup>1</sup> For further information on recent developments and key areas of concern regarding torture and other ill-treatment in Tajikistan, refer to:

- Joint document by the NGO coalitions against torture in Kazakhstan, Kyrgyzstan and Tajikistan, Amnesty International, the Helsinki Foundation for Human Rights (Poland), International Partnership for Human Rights (Belgium) and the World Organisation against Torture (OMCT): *Tajikistan needs to do more to end torture. An overview of current concerns*, February 2015: <http://notorture.tj/en/reports/tajikistan-needs-do-more-end-torture-overview-current-concerns>

- Joint document by the Coalition against Torture in Tajikistan, Amnesty International, Helsinki Foundation for Human Rights and International Partnership for Human Rights: *Tajikistan: Second joint follow-up submission to the Concluding Observations of the United Nations Committee against Torture*, May 2015: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGS%2fTJK%2f20451&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGS%2fTJK%2f20451&Lang=en)

<sup>2</sup> There continues to be concern, however, that penalties under Article 143-1 are not commensurate with the severity of the crimes committed. In November 2012, the Committee against Torture recommended Tajikistan to “amend article 143-1 of the Criminal Code to ensure that sanctions for the offence of torture reflect its grave nature, as required by article 4 of the Convention” (Paragraph 6).

<sup>3</sup> In 2012 and 2013, four criminal cases were opened and charges were brought against the perpetrators. In April 2015, the fifth case was opened, but no suspect has yet been charged (see the **case of Shamsiddin Zaydullov** in the annex to this document).

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Shodiev) were the first known cases to have been awarded compensation for torture or other forms of ill-treatment by the courts.<sup>4</sup> In 2015, the authorities set up a working group to elaborate a concept for reforming the penitentiary system. In May representatives of the NGO Coalition against Torture in Tajikistan were invited to attend the working group's meetings and provide comments and recommendations.

From 2011 to the end of 2014, members of the Coalition against Torture documented more than two dozen cases each year of men, women and children who were allegedly subjected to torture or other ill-treatment. In the first four months of 2015 the Coalition registered 12 cases. Only in a small number of these cases, official investigations were opened, and in many cases -- whilst the incidence of torture or other ill-treatment would appear to have been confirmed, at least partly -- only disciplinary proceedings have been imposed. It is believed that many victims of torture did not file complaints for fear of reprisals.

### **End incommunicado detention**

Torture in Tajikistan ordinarily takes place during the first hours of detention, before the person's detention is formally registered. During this period detainees are in many cases de facto held incommunicado. Police also often apprehend people for administrative offences as a pretext for keeping them in custody for five to 15 days. In Tajikistani legislation the legal safeguards pertaining to those detained on criminal charges are stronger, and do not apply fully to those detained on administrative charges.

International human rights law clearly states that a person is considered a detainee as soon as he or she is "depriv(ed) of liberty (...) in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority" (e.g. Art. 4(2) of the Optional Protocol to the Convention against Torture). Safeguards such as prompt access to legal counsel of the detainee's choice, to independent medical personnel, and to notify family must then be in place to provide protection from torture and other ill-treatment.

However, Tajikistani legislation does not follow the above definition and is ambiguous as to when a person is considered a detainee. In practice, law enforcement agencies and courts typically consider a person a detainee when the detention record is drawn up. This may be several hours, or even several days, after the de facto arrest. As a result, during this time detainees typically have no access to any of the legal safeguards enshrined in Tajikistani legislation, including access to their family, a lawyer and medical attention.

In November 2012, the UN Committee against Torture recommended Tajikistan to "ensure that arrest starts from the moment of de-facto apprehension" (Paragraph 8 (a)). In January 2013, the Special Rapporteur on torture also called on Tajikistan to "(a)mend the Code of Criminal Procedure to ensure that the time of arrest starts from de facto apprehension and delivery to a police station". (Paragraph 99e).

The Committee against Torture additionally urged Tajikistan "to take prompt and effective measures to ensure, in law and in practice, that all detainees are afforded all legal safeguards from the very outset of their apprehension" (Paragraph 8). In addition, the Special Rapporteur on torture recommended Tajikistan in February 2015 to "ensure that the failure to comply with and implement existing legal provisions is considered a severe fault and accompanied by appropriate sanction, and not mere disciplinary measures" (Paragraph 12).

### **Establish an independent investigation mechanism to end impunity**

In its concluding observations issued to Tajikistan in 2012, the Committee against Torture expressed concern about the small number of convictions under domestic law for violations of the Convention against Torture, despite numerous allegations of torture.

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<sup>4</sup> Torture victim Shakhbol Mirzoev is the third case where a court granted compensation for moral damages suffered as a result of torture. However, we believe that the amount of compensation granted to Shakhbol Mirzoev in May 2015 is neither fair nor adequate (see the **case of Shakhbol Mirzoev** in the annex to this document). Court hearings are currently ongoing on another compensation case initiated in 2014 (refer to the **case of Khushvakht Kayumov** in the annex). In 2015, two further applications for compensation were registered by the courts, but the hearings have not yet begun.

Torture complaints are examined by the internal security services of the Ministry of Internal Affairs, the State Committee for National Security, the Drug Control Agency or other law enforcement agencies – if they are submitted to these very agencies that are implicated in the torture complaint – or by prosecutors. If the preliminary investigation carried out by the internal security services does not find evidence of torture or other ill-treatment that they consider requires the opening of a criminal case, domestic legislation does not oblige them to pass on the case information to the Prosecutor's Office.

Since Article 143-1 (torture) was introduced to the Criminal Code of Tajikistan in 2012 prosecutors have led the investigations in all five cases that have since been opened under this Article. However, domestic legislation has not yet been amended to reflect this practice of prosecutorial investigations into the crime of torture under Article 143-1. Most cases involving allegations of torture or other ill-treatment continue to be opened under other articles of the Criminal Code such as “abuse of authority” or “negligence”. In all these cases investigations are carried out by the agency that conducted the preliminary investigation, i.e. by law enforcement agencies or prosecutors.

When prosecutors initiate torture investigations, they lead the investigation, but domestic legislation permits them to order police to undertake investigative activities and gather evidence. Prosecutors and policemen from the same regions often have close professional and sometimes even personal links. This clearly hinders the possibilities for impartial and independent investigations to be conducted.

In those cases where torture violations are revealed during the court hearing prosecutors have an inherent conflict of interest. The law envisages that prosecutors carry out both the function of criminal prosecution and that of supervision over the legality of the investigative process, which creates a conflict of interest. Within the function of criminal prosecution, the prosecutor presents indictments in courts that are frequently based on information provided by police or other law enforcement agencies. By revealing violations (including torture) that took place during their investigative activities, the prosecutor undermines the legitimacy of the collected evidence and weakens the arguments presented in the indictment.

Both the Committee against Torture and the Special Rapporteur on torture recommended Tajikistan to “establish an effective and independent (investigation mechanism) with no connection to the body prosecuting the case against the alleged victim” (Paragraph 11(a) of the Committee against Torture and Paragraph 100 (g) of the January 2013 report of the Special Rapporteur on torture).

According to the preliminary report on the implementation of the Government Action Plan on torture distributed by the Department on Human Rights Guarantees of the Presidential Administration of Tajikistan in March 2015, the General Prosecutor's Office set up a working group to examine these recommendations. However, it believed no separate mechanism was currently needed considering the “very insignificant” number of torture complaints. We are concerned that the Coalition against Torture in Tajikistan has not been invited to participate in the working group in order to provide recommendations and comments.

### **No lenience for torturers**

We are concerned that domestic legislation does not exclude perpetrators of torture or other ill-treatment from benefitting from prisoner amnesties and we are aware of several cases in recent years where torturers were released from prison following such amnesties or had their sentences reduced. (See, for example, the **case of Khushvakht Kayumov** in the annex).

We are also concerned that Tajikistani legislation contains a statute of limitations applicable to the crimes of torture or other ill-treatment, which is strictly forbidden under international law.

The Committee against Torture recommended Tajikistan to “ensure that the Law on Amnesty contain clear provisions stipulating that no person convicted for the crime of torture will be entitled to benefit from amnesties, and that such prohibition is strictly complied with in practice” (Paragraph 7). In the January 2013 report on his mission to Tajikistan the Special Rapporteur on torture called on the authorities to “(r)evoked the legal provisions of the Code of Criminal Procedure allowing the termination of criminal proceedings and exempting defendants from criminal liability by reason of (...) expiration of the statute of limitations for criminal prosecution, whenever the case concerns allegations of torture and ill-treatment” (Paragraph 99(d)).

According to the March 2015 preliminary report on the implementation of the Government Action Plan on torture, the Ministry of Justice set up a working group on the application of amnesty laws to people

convicted under Article 143-1 (torture) of the Criminal Code. We are concerned that the Coalition against Torture has not been invited to participate in order to provide recommendations and comments on relevant draft legislation.

**Recommendations:**

Local and international organizations including UN human rights bodies and procedures have issued recommendations to the authorities of Tajikistan in recent years in order to address ongoing torture and other ill-treatment in the country. We call on the authorities to implement all recommendations made by UN human rights institutions in order to end torture and other forms of ill-treatment in the country.

We urge representatives of the EU to place particular emphasis on the following three recommendations at the June 2015 EU-Tajikistan Human Rights Dialogue. We believe that by implementing these recommendations as a matter of priority the country would make significant progress toward eradication of torture.

- **Ensure that individuals have access to fundamental legal safeguards such as access to a lawyer of the detainee's choice, information about the detainee's rights, notification of family, and access to independent and qualified medical personnel from the moment he or she is deprived of liberty and amend the Criminal Procedure Code of Tajikistan (CPC) accordingly.** This would be in line with recommendations issued to Tajikistan by the Committee against Torture in November 2012 (Paragraph 8) and the Special Rapporteur on torture in January 2013 (Paragraph 99(e)) and in February 2015 (Paragraph 12) respectively.
- **Introduce legislation to create and fund an independent body endowed with sufficient authority and competence to conduct prompt, thorough and independent investigations into allegations of torture or other ill-treatment.** This would be in line with recommendations issued to Tajikistan by the Committee against Torture in November 2012 (Paragraph 11(a)) and the Special Rapporteur on torture in January 2013 (Paragraph 100(g)). **In the meantime, establish dedicated units of prosecutors responsible for carrying out all investigations into allegations of torture and other ill-treatment and amend domestic legislation accordingly.**
- **Legislate that perpetrators of torture or other ill-treatment are excluded from prisoners amnesties and abolish the statute of limitations with regard to such crimes.** This would be in line with recommendations issued to Tajikistan by the Committee against Torture (Paragraph 7) and the Special Rapporteur on torture in January 2013 (Paragraph 99(d)).

## **ANNEX: THE CASES OF KHUSHVAKHT KAYUMOV, SHAKHBOL MIRZOEV AND SHAMSIDDIN ZAYDULLOEV**

### **Prison sentence of policeman who tortured 17-year old Khushvakht Kayumov reduced under prisoner amnesty**

On 27 April 2012, Mashraf Aliev, then officer of Yavan district police in the southern Khatlon region, summoned Khushvakht Kayumov from the village of Kulobod to the district police station, where he beat and kicked the young man and threatened to torture him with electric shock unless he confessed to a theft. Khushvakht Kayumov insisted he was innocent. Mashraf Aliev let him go home in the evening, but demanded that he return the next day. On 28 April, the beatings continued and Khushvakht Kayumov eventually signed a “confession” in order to avoid further abuse. Mashraf Aliev threatened that Khushvakht Kayumov would be beaten by 200 policemen if he later retracted his confession. Devastated by the experience of abuse, Khushvakht Kayumov decided to commit suicide. On 29 April, his relatives found him hanging from the ceiling of the family’s barn in an unconscious state. They were able to save his life by quickly arranging for him to be taken to the local hospital.

On 30 April 2012, the Prosecutor’s Office of Yavan district opened a criminal case against Mashraf Aliev for “torture” (Article 143-1, part 2 of the Criminal Code of Tajikistan) and “exceeding official responsibility” (Article 316, part 1 of the Criminal Code). On 7 September 2012, Yavan district court found the officer guilty of committing these crimes and sentenced him to seven years’ imprisonment.

On the initiative of the Chairman of the Supreme Court of Tajikistan, the case was sent for additional investigation on 19 February 2013. On 11 December 2013, Kurgan Tyube city court found Mashraf Aliev guilty of the crime of “torture” under Article 143-1, part 3 of the Criminal Code of Tajikistan, which punishes torture that has severe consequences including to a person’s health. It sentenced Mashraf Aliev to seven years’ imprisonment, to be served in a strict prison colony (in Russian: колония усиленного режима).

In October 2014, a claim for 300,000 Somoni (approx. 43,500 EUR) was lodged against the Ministry of Internal Affairs of Tajikistan to compensate for moral damages suffered by Khushvakht Kayumov as a result of torture. Ismoil Somoni district court in Dushanbe is currently considering the civil case.

The Coalition against Torture in Tajikistan recently learnt that Mashraf Aliev’s prison sentence was reduced to three years in early 2015 as a result of applying amnesty laws and on 30 April 2015, Sino district court in Dushanbe ordered that he be transferred to a settlement colony (in Russian: колония-поселение), a less strict type of colony than where he was held before. to serve the rest of his sentence. In practice, however, he was released early for good conduct, lives at home and reports to the authorities once a week.

### **Key recommendations:**

- Express concern that the seven-year prison sentence of police officer Mashraf Aliev, who was convicted in 2013 for torturing Khushvakht Kayumov from the village of Kulobod in Khatlon region, was reduced to three years in 2015.
- Highlight that the United Nations Committee against Torture recommended Tajikistan to “ensure that the Law on Amnesty contain clear provisions stipulating that no person convicted for the crime of torture will be entitled to benefit from amnesties, and that such prohibition is strictly complied with in practice” (Paragraph 7) and urge the authorities to implement this recommendation as a matter of priority.
- Seek assurances that Khushvakht Kayumov will receive adequate compensation for harm suffered as a result of torture and other forms of ill-treatment.
- Tajikistan should also ensure, in line with Paragraph 21 of the November 2012 Concluding Observations of the Committee against Torture, “that there are clear provisions in the domestic legislation on the right of torture victims to redress, including fair and adequate compensation and rehabilitation for damages caused by torture”.

### **Torture compensation given to Shakhbol Mirzoev not commensurate with the harm suffered**

Shakhbol Mirzoev, who voluntarily enrolled for service in the Border Guards of Tajikistan in October 2013 after having finished his Commercial Law studies, was subjected to torture by medical and military personnel serving at a border guards unit, on 6 March 2014. Usmon Gayratov, a serviceman and medical attendant, harassed and attempted to humiliate the 22-year old Shakhbol. When the

young man ignored the provocation, the medical attendant grabbed and threw him on his back on the floor. As a result of the fall, he suddenly lost all sensation in his extremities. When others noticed that Shakhbol Mirzoev was not moving they lifted him up three times, tried to stand him up on his feet, but the young man fell down and hit his head on the floor. Then soldiers reportedly cut the soles of his feet with razor blades, pricked different parts of his body with needles, and poured boiling water over his back. When they understood that Shakhbol Mirzoev was really unable to feel his extremities, they left him alone in the clinic.

Doctors of the National Medical Centre later diagnosed him with a fracture to the fifth spinal disk, damage to various organs, and the loss of sensitivity in his arms and legs. Shakhbol Mirzoev had to be flown to Moscow because there are no specialists in Tajikistan for the operation he required. In order to cover the expenses, his family sold their house. Although the administration of the Border Guards of Tajikistan promised to cover all medical expenses, it only covered expenses incurred during his hospitalization at the National Medical Center in Tajikistan. Shakhbol Mirzoev is now seriously disabled. He is able to sit in a wheel chair a maximum of two hours per day. The rest of the time he has to lie down.



Shakhbol Mirzoev was tortured by military and medical personnel at a Border Guards unit in March 2014. As a result, he is able to sit in a wheel chair a maximum of two hours per day. The rest of the time he has to lie down.

On 19 June 2014, the Military Court of Dushanbe sentenced Usmon Gayratov to nine years' imprisonment for "violating the code of military conduct" (Article 373, part 2 of the Criminal Code of Tajikistan) and "leaving somebody in a dangerous situation" (Article 127, part 1) and ordered him to pay 570,000 Somoni (approx. 83,000 EUR) to cover expenses incurred by the Administration of Border Guards for Shakhbol Mirzoev's medical treatment. It also sentenced Gulrukhsor Shirinova, a servicewoman and medical attendant, to 18 months' corrective labour for "negligent attitude to service" (Article 392 of the Criminal Code) and "violating service rules" (Article 382). Additionally, it ordered that she pay 15 per cent of her salary to the government. Gulrukhsor Shirinova was scheduled to be on duty in the medical unit the day Shakhbol Mirzoev was tortured, but she left the premises and put Usmon Gayratov in charge of the unit although she was aware that Shakhbol Mirzoev was not safe.

The authorities did not conduct a thorough, impartial and independent investigation into whether the commanding officer of the Border Guards unit committed the crime of "negligence" by not preventing the torture of Shakhbol Mirzoev.

In November 2014, Shakhbol Mirzoev applied to the Military Court of Dushanbe seeking compensation for material and moral damages. On 25 May 2015, the Court decided to award Shakhbol Mirzoev 97,265 Somoni (approx. 14,200 EUR) for material damages and 20,000 Somoni (approx. 2,900 EUR) for moral damages. We believe that the amount of damages granted to Shakhbol Mirzoev for moral harm is incommensurate with the harm suffered and is not in line with Tajikistan's obligations under international human rights law. Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that "(e)ach State Party shall ensure in its legal system that the victim of an act of torture (...) has an enforceable right to fair and adequate compensation".

#### Key recommendations:

- Express concern that the amount of compensation granted to Shakhbol Mirzoev by the Military Court of Dushanbe on 25 May 2015 for moral damages resulting from torture appears to be incommensurate with the harm suffered and is neither fair nor adequate.
- Express concern that the authorities have not provided Shakhbol Mirzoev with the means for the fullest rehabilitation possible.
- Highlight that the United Nations Special Rapporteur on torture urged the authorities of Tajikistan in his February 2015 follow-up report to his mission to Tajikistan to "ensure that victims obtain redress and fair and adequate compensation, including the means for the fullest

rehabilitation possible” (Paragraph 43). Seek assurances that this recommendation is implemented as a matter of priority.

- Express concern that the authorities did not conduct a thorough, impartial and independent investigation into whether the commanding officer of the Border Guards unit committed the crime of “negligence” by not preventing the torture of Shakhbol Mirzoev.

#### **Twenty-five-year old Shamsiddin Zaydullov died in police custody in suspicious circumstances in April 2015**

Shamsiddin Zaydullov’s mother told the Coalition against Torture in Tajikistan that in the evening of 8 April 2015, as his son was waiting in his car outside a shop in the Sino district of Dushanbe, three or four men in plainclothes suddenly opened the doors of his car, grabbed and handcuffed him without an explanation and beat him. When several of his neighbours and a passer-by peacefully intervened, the men detached the handcuffs and left. Later that evening, however, officers of the Drug Control Agency of Tajikistan came to the family’s flat and detained him accusing him on drug-related crime. Reportedly, they did not present an arrest warrant and took him to the building of the Drug Control Agency. Among the detaining officers were the same men who had been in plainclothes earlier that evening and had abused Shamsiddin in his car.

On 9 April, Shamsiddin Zaydullov’s mother visited him in the building of the Drug Control Agency. She recalled: “When I petted his head he said I shouldn’t touch the back of his head because it was swollen and painful. I asked him in a low voice whether he was beaten and he nodded.” When she wanted to visit her son again on 10 and on 11 April she was not given access under various pretexts. In the evening of 11 April Shamsiddin Zaydullov’s reported to have received a phone call from the investigator’s telephone. First Shamsiddin Zaydullov told her that the remand hearing had taken place that day, that he was charged with “selling small quantities of drugs” (Article 200, part 1 of the Criminal Code of Tajikistan) and that he needed a lawyer. Then the investigator took the receiver and confirmed the information.

Shamsiddin Zaydullov’s mother hired a lawyer (who does not work for the Coalition against Torture). When the two wanted to visit the young man in custody on 12 April they were unable to reach the investigator on the phone, after which they decided to try visiting him again the next day. In Tajikistan lawyers are often only given access to their clients in police custody when the investigator permits them to do so.

Early on 13 April, a neighbour of Shamsiddin Zaydullov’s parents told them that Shamsiddin Zaydullov was dead. The neighbour had received the information from an official of the Drug Control Agency. The parents later told the Coalition against Torture that when they saw his body in the morgue it was covered in bruises and they provided the Coalition with several photographs as evidence. The same day the parents petitioned for a forensic medical examination to be conducted.

Shamsiddin Zaydullov’s parents hired a lawyer who cooperates with the Coalition against Torture because they wanted expert legal assistance in their struggle for justice. On 16 April 2015, the parents lodged a complaint with the Prosecutor General’s Office of Tajikistan and urged to conduct an effective investigation into their son’s death. On 25 April, the General Prosecutor’s Office opened criminal proceedings under Article 143-1 of the Criminal Code (“torture”).

On 13 May, the parents and the lawyer were given access to the results of the forensic medical examination that was conducted after the autopsy. The forensic medical expert concluded the cause of death was pneumonia. The same day the lawyer petitioned the Prosecutor General’s Office for a new forensic medical examination and on 14 May the Prosecutor General’s Office ordered that an interdisciplinary forensic medical examination be conducted. The exhumation was scheduled to take place on 27 May and the lawyer and Shamsiddin Zaydullov’s parents are waiting for the results.

#### **Key recommendations:**

- Seek assurances that the investigation into the circumstances of Shamsiddin Zaydullov’s death is conducted thoroughly, impartially and independently.
- Seek assurances that anyone suspected to be responsible of causing Shamsiddin Zaydullov’s death is brought to justice without delay.