



Annex: Cases involving allegations of torture/ill-treatment in Tajikistan, May 2016

The circumstances of Shamsiddin Zaydulloev's death in custody remain unclear

Shamsiddin Zaydulloev died in police custody under suspicious circumstances in April 2015. An investigation was conducted, but the Prosecutor General's Office closed it in December for "lack of evidence of a crime", although the circumstances of his death remain unclear and the origin of injuries and bruises on his body has not been established. A thorough, impartial and independent investigation needs to be conducted in order to clarify the circumstances of his death.

Shamsiddin Zaydulloev, age 25, was detained in his home in the capital city of Dushanbe by officers of Tajikistan's Drug Control Agency on 8 April 2015, and later charged with "selling small quantities of drugs" (Article 200, part 1 of the Criminal Code of Tajikistan). The next day his 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, 11 and 12 April she was not given access under various pretexts. On 13 April Shamsiddin's parents were informed that their son was dead. When they saw his body in the morgue it was covered in bruises. They gave the NGO Coalition against Torture several photographs as evidence.



Shamsiddin Zaydulloev died in custody under suspicious circumstances. © Private

On 25 April the Prosecutor General's Office opened criminal proceedings under Article 143-1 of the Criminal Code, entitled "torture". The family's lawyers petitioned to view the recordings of a video camera installed in the detention facility of the Drug Control Agency where Shamsiddin was held, but a technical forensic examination carried out in May 2015 concluded that the camera was not functioning from 8 to 13 April. The family's lawyer pointed out, however, that a short recording of the same camera dated 12 April was included in the case file.

Three forensic medical examinations conducted by experts of the Republican Center of Forensic Medical Examinations of Tajikistan (RCFME) in order to establish the cause of Shamsiddin's death yielded contradictory results. The first examination

was carried out after the autopsy and the experts concluded that Shamsiddin had died of pneumonia. Shamsiddin's mother has maintained that her son was not sick when he was detained and following a petition by the family's lawyers, the Prosecutor General's Office ordered the RCFME to carry out an exhumation and an interdisciplinary forensic medical examination. The examination, conducted on 3 August, concluded that Shamsiddin's death may have been caused by serious bodily injuries including four to five broken ribs and a fracture in his skull. In addition, the experts pointed out that he may have been administered First Aid too late. On 18 August the Prosecutor General's Office commissioned a third forensic examination. Like the first forensic examination, this examination concluded that he died of pneumonia.

On 23 December the Prosecutor General's Office closed the criminal investigation for "lack of evidence of a crime". The family's lawyer lodged a complaint against the decision since the investigation has not clarified how Shamsiddin sustained the injuries and bruises. An appeal against the results of the preliminary investigation is pending with Sino District Court in Dushanbe.

Recommendations:

- Express concerns that the circumstances of Shamsiddin Zaydullov's death remain unclear and that the origin of his injuries and bruises has not been established.
- Call on the authorities to open a thorough, impartial and independent investigation into his death and the origin of the injuries and bruises and bring to justice anyone found responsible for abusing him.

For further information on the case of Shamsiddin Zaydullov, refer to: http://iphronline.org/wp-content/uploads/2015/09/tajikistan_torture_cases_june_2015.pdf

The investigation into the circumstances of Umar Bobojonov's death must be conducted effectively

Umar Bobojonov, aged 23, died shortly after he was taken into custody by police in the city of Vahdat, some 20 kilometers east of Dushanbe. Two eyewitnesses confirm that police officers abused him. We are concerned by indications that the investigation into his death is not being conducted effectively.

According to Umar Bobojonov's brother Abdullo, police in plainclothes approached Umar in the centre of Vahdat on 29 August 2015, criticized him for wearing a beard and forced him and his friend Zoir into a car. At the local police station police officers beat and kicked them and one officer kicked Umar's head so severely that he hit the wall with the back of his head and dropped to the ground unconscious. Zoir and another detainee saw the incident. Abdullo came to the police station later that evening in search of Umar. The duty officer reportedly told him that Umar was not there, but shortly afterwards Abdullo saw that an ambulance picked up his brother from the police station and he was allowed to join the severely injured Umar on the way to the hospital. Medical personnel at Vahdat City Hospital assessed Umar's situation as "very serious" and took him for reanimation, but he remained in a coma until he died on 4 September.



Why did Umar Bobojonov die in police custody in August 2015? © Private

On 1 September the Vahdat Prosecutor's Office opened a criminal case for "unintentionally inflicting serious bodily harm" (Article 110, part 1 of the Criminal Code). On 4 September the forensic medical examination conducted by experts of the Vahdat branch of the State Forensic Medical Institute concluded that Umar Bobojonov died of head injuries. On 5 September the charge was changed to "inflicting serious bodily harm resulting in death" (Article 110, part 3 of the Criminal Code).

We are concerned about shortcomings in the way the Vahdat Prosecutor's Office has conducted the investigation. For example, the prosecutor in charge of the case has on many occasions responded to petitions by the lawyer representing Umar Bobojonov's family with a significant delay and the lawyer was only given access to case materials that he is entitled to view by law after complaining to the Prosecutor General's Office in December 2015. Crucial investigative activities that should be conducted promptly, such as the confrontation of the alleged perpetrators and the witnesses, took place only over four months into the investigation.

Recommendations:

- Ensure that the investigation into Umar Bobojonov's death is conducted effectively and that those found responsible will be brought to justice.

The soldier Faruhjon Haytaliev was reportedly subjected to torture/ill-treatment by officers and a fellow-soldier

Faruhjon Haytaliev, who had served in the armed forces of Tajikistan since October 2014, died in January 2016, reportedly as a result of torture or ill-treatment by senior army personnel and a fellow soldier. We call on the Military Prosecutor's Office to ensure that the investigation of the allegation will be conducted thoroughly, impartially and independently. All those found responsible must be brought to justice.

21-year-old Faruhjon Haytaliev joined the armed forces in October 2014 and served in Unit 1/2847 of the Border Guards under the authority of the State Committee on National Security of Tajikistan. According to the family's lawyer, Faruhjon Haytaliev was beaten with fists and a machine gun butt by fellow soldier on 4 November 2015. On 8 and 11 January 2016 the soldier beat him repeatedly, kicking and punching him and hitting him with a machine gun butt all over his body. Two senior officers at the military unit noticed that Faruhjon Haytaliev was injured and could not stand up after the beating, but they kept him in the military unit and failed to seek medical attention for seven days. On 20 January 2016 he died as he was being taken to the military hospital. A forensic medical examination carried out from 20 January until 15 February concluded that Faruhjon's body was bruised and his left shoulder severely injured. Witness statements and photographs taken by Faruhjon Haytaliev's family also provide evidence of the extent of the injuries. On 20 January 2016 the Military Prosecutor's Office charged the Captain of the Military unit 2847 and his Deputy with "abuse of authority or duty" (Article 391 of the Criminal Code of Tajikistan). The soldier who beat Faruhjon Haytaliev was charged with "violating the code of military conduct" and "intentionally causing bodily injury" (Article 373.3 a, b and c and Article 110.3 ,b). One of the duties of the officers of Military units is to counteract hazing in the army. The court case began on 28 April and is ongoing at the time of writing. While conscripts at the early stages of their service are often subjected to hazing by fellow-conscripts, those serving their second year – like Faruhjon Haytaliev – are virtually never subjected to abuse by fellow-soldiers unless officers order them to ill-treat another soldier.

Paralyzed military conscript Shakhbol Mirzoev: still waiting for promised compensation

On 6 March 2014, twenty-two-year old military conscript Shakhbol Mirzoev was beaten so badly by Usmon Gayratov, a serviceman and medical attendant of the Border Guards Unit that he was left paralyzed. Two years on, his fight for adequate compensation continues.

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 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 had lost feeling in his legs, 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

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. A servicewoman and medical attendant was also sentenced to 18 months' corrective labour for "negligent attitude to service" (Article 392 of the Criminal Code) and "violating the code of military conduct" (Article 373), as she was scheduled to be on duty in the medical unit the day Shakhbol Mirzoev was tortured, but 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".

On 6 August 2015 the Military Collegium of the Supreme Court of Tajikistan overturned the decision and referred the civil case to the court of first instance. On 26 October 2015 the civil case was heard by the Military court of Dushanbe.

Arguments by both sides were presented again. Lawyers report that this is a particularly complicated case, with false information provided to the court by the respondent party regarding Shakhbol's health and claims that he had undergone unnecessary medical treatment in Moscow. Shakhbol's lawyer refuted such claims, pointing to the fact that he had gained weight and that his health significantly improved after surgery and rehabilitation treatment. Indeed, Shakhbol recovered some feeling in his legs in April 2016. From November 2015, representatives of the Border guard forces have undertaken further investigations into evidence presented in court relating to the expenditures incurred by Shakhbol's family for his medical treatment in Moscow; including the fact that they had to sell their flat and their two cars. Shakhbol receives a disability allowance from the state of 130 Somoni per month (about 14.5 Euros) but the family has not received any compensation as yet.