

Case No. GD-839/18.BZ

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**DECISION
on behalf of the Kyrgyz Republic**

October 16, 2018

Bishkek

Pervomaiski District Court of Bishkek

consisting of Venera Janybek kyzy, Chair
D.B. Omorbekov, Secretary

considered in open court session attended by the parties a civil lawsuit filed by Chyngyz Suyumbaevich Suyumbaev against the Kyrgyz Republic Ministry of Finance requesting compensation for non-pecuniary damage,

ESTABLISHED THE FOLLOWING:

Plaintiff Chyngyz Suyumbaevich Suyumbaev filed a lawsuit against the Kyrgyz Republic Ministry of Finance requesting compensation for non-pecuniary damage. To support his statement of claim, the plaintiff indicated the following.

The Decision of A. Mamazhakyp uulu, an investigator with the Uzgen Inter-rayon Prosecutor's Office, dated May 25, 2005, opened a criminal case №147-05-167 involving the death of plaintiff's brother Turdubek Akmatov on grounds of a crime stipulated in part 1 of Article 97 of the Kyrgyz Republic Criminal Code. Following an investigation into the criminal case No. 147-05-167, the Decision of the investigator A. Mamazhakyp uulu dated May 27, 2005, recognized the plaintiff Suyumbai Akmatov as a victim.

Due to the failure of investigative bodies of the Kyrgyz Republic to conduct an impartial, thorough, prompt and effective investigation into the death of Turdubek Akmatov's brother, and following the exhaustion of the national remedies, on April 07, 2011, Syuymbai Akmatov, the father of the deceased, sent an individual complaint to the UN Human Rights Committee about violations by the Kyrgyz Republic of Turdubek Akmatov's rights under Articles 6 (1) and 7 of the International Covenant on Civil and Political Rights (ICCPR), considered separately and in conjunction with Article 2 (3) of the Covenant.

UN Human Rights Committee's View No.2052/2011 (adopted at the 116th session held on October 19 - November 5, 2015), recognized the Kyrgyz Republic responsible for the arbitrary deprivation of life and torture of the plaintiff Turdubek Akmatov's brother. In p.10 of its View, the UN Human Rights Committee notes that the Kyrgyz Republic is under the obligation to take measures to eliminate obstacles to providing compensation under a civil claim, independently of any related criminal proceedings — and to provide full reparation to persons, whose rights have been violated, and adequate compensation and appropriate measures of satisfaction. Within 180 days of the adoption of the UN Human Rights Committee's View, the Kyrgyz Republic Government took no steps to implement the Committee's Views (p.11) (this paragraph fills the gap between the first and third paragraphs).

On June 24, 2016, the plaintiff's father Suyunbai Akmatov, filed a petition to the Kyrgyz Republic Prime Minister requiring the Government to fulfill the View of the UN Human Rights Committee in the form of a monetary compensation.

On August 15, 2016, the Kyrgyz Republic Government reported that the petition had been referred to the Kyrgyz Republic Prosecutor General with the instruction to review the same and report the respective results.

According to the Notice No. 8/3-87-16 of the Kyrgyz Republic Prosecutor General dated December 12, 2016, compensation issues are to be considered by a court in civil procedure in accordance with the

requirements of the Kyrgyz Republic Civil Procedure Code on the bases of an application by a party concerned.

According to paragraph 31 of the Regulations on Procedure for Interaction of State Bodies to Consider Communications and Decisions of the UN human rights treaty bodies (approved by the Kyrgyz Republic Government Decree No.731 dated November 8, 2017), the size of compensation for damages is to be set in court.

This statement of claim was filed to protect the rights and freedoms guaranteed by the Kyrgyz Republic Constitution and international treaties to which Kyrgyz Republic is a party. In particular, Article 41 of the Kyrgyz Republic Constitution stipulates that “[E]veryone shall have the right to apply in accordance with international treaties to international human rights bodies seeking protection of violated rights and freedoms”. Paragraph 5 of Article 20 of the Kyrgyz Republic Constitution further guarantees that the constitutional right to compensation by the state for harm caused by illegal actions of state authorities, local self-governance bodies and officials thereof in their official capacity shall not be subject to any limitation whatsoever. The Kyrgyz Republic Constitution has supreme legal force and direct legal effect. According to Article 6 of the Kyrgyz Republic Constitution, international treaties to which the Kyrgyz Republic is a party that have entered into force under the established legal procedure and also the universally recognized principles and norms of international law shall be the constituent part of the legal system of the Kyrgyz Republic. Additionally, this article stipulates that “the provisions of international treaties on human rights shall have direct action and be of priority in respect of provisions of other international TREATIES”. Furthermore, pursuant to Article 31 of the Kyrgyz Republic Law “On International Treaties of the Kyrgyz Republic”, international treaties to which the Kyrgyz Republic acceded shall be subject to strict compliance by the Kyrgyz Republic in accordance with the international law and laws and regulations of the Kyrgyz Republic.

The Kyrgyz Republic shall take measures to recover and/or compensate Akmatov’s family. In accordance with the UN Human Rights Committee View No. 2052 / 2011, the Kyrgyz Republic was found responsible for the arbitrary deprivation of life and torture of Turdubek Akmatov. When producing its View No.2052/2011, the UN Human Rights Committee acted in accordance with paragraph 4 of Article 5 of the Optional Protocol to the International Covenant on Civil and Political Rights (Kyrgyz Republic acceded to the International Covenant on Civil and Political Rights and the Optional Protocol thereto by Resolution No.1406-XII of the Kyrgyz Republic Jogorku Kenesh dated January 12, 1994). According to the International Covenant on Civil and Political Rights, a State party has a special responsibility for caring for the life of an individual within its jurisdiction and is obliged to take adequate and necessary measures to protect his or her life. By acceding to the Optional Protocol to the International Covenant, the Kyrgyz Republic has recognized the competence of the UN Human Rights Committee and its legal practice in accepting and considering communications from individuals subject to its jurisdiction who claim to be victims of violation by this State party of any of the rights set forth in the Covenant. The circumstances and evidence contained in the Committee’s View indicate the violation of rights and freedoms guaranteed by the Covenant, which condemned the plaintiff and his family members to over 12 years of pain and suffering.

According to the obligations of the Kyrgyz Republic assumed under the International Covenant on Civil and Political Rights, victims of human rights violations shall be compensated non-pecuniary damages by the state. In the event that the victim of human rights violations is deprived of life or died during the proceedings, non-pecuniary damages shall be compensated to victim’s relatives (part 3 of Article 50 of the Kyrgyz Republic).

According to the requirements of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (adopted by the Resolution of the UN General Assembly (A/RES/60/147)

at the 66th plenary meeting on December 16, 2005), adequate, real and quick reparation of damage is intended to contribute to the achievement of justice, by restoring the victim's rights violated as a result of violations of international human rights law. Compensation must be commensurate with the severity of the violations and the damage caused, which includes, in particular, compensation. According to the above principles, the state that violated the rights must provide compensation for any economically assessable damage in the prescribed manner and proportionate to the seriousness of the violation resulting from gross violations international human rights law, including:

- 1) Physical or mental harm;
- 2) Lost opportunities, including employment, education and social benefits;
- 3) Material damages and loss of earnings, including loss of earning potential;
- 4) Moral damage;
- 5) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

Compensation of inflicted harm is one of the ways to protect the violated rights and freedoms, as provided for by the Kyrgyz Republic Civil Code (KR CC). Judicial protection of personal non-property rights and non-material benefits that belong to citizens from birth or by virtue of law, compensation for moral damages caused to citizens is one of the ways to implement their constitutional rights and freedoms. In particular, according to Article 16 of the KR CC, if the citizen has suffered moral damages (physical or moral suffering) resulting from actions that encroached on non-material benefits belonging to a citizen or violated his/her personal non-property rights, and in other cases stipulated by law, the court may impose an obligation on the violator to provide monetary or other material compensation of the harm.

In accordance with Articles 11, 16, 17, 50 of the KR CC, the protection of personal non-property rights and other non-material benefits is performed by the court in the cases and to the extent to which the use of civil law rights protection means follows from the substance of the violated right and the nature of the consequences of the violation. At the same time, moral rights and other non-material benefits belonging to the deceased may be exercised and protected by other persons, including the heirs of the right holder.

The Kyrgyz Republic civil legislation provides for provisions prescribing compensation for harm to persons who suffered damages as a result of the death of a citizen caused by illegal actions (inaction) of state bodies, local governments or their officials. Thus, according to Article 998 of the KR CC, harm caused to a citizen or a legal entity by illegal actions (inaction) of state bodies, local self-government bodies or their officials, including an act of a state body that does not comply with the law or other legal act or local government body, is subject to reparation at the expense of the relevant state treasury (paragraph 2 of Article 225 of the KR CC).

According to the Decree No.11 of the Plenum of the Kyrgyz Republic Supreme Court "On some issues of judicial practice of applying the legislation on compensation for moral harm" dated November 4, 2004, the state shall be a defendant in cases pertaining to this category (Articles 168-170 of the KR CC). In accordance with Article 53 of the Civil Procedure Code and Article 169 of the Civil Code, the following state bodies that are authorized to undertake expenditures, assume and fulfill the obligations under the local and national budgets, shall act on behalf of the state in court (represent the state): the Kyrgyz Republic Government represented by the Ministry of Finance, when the harm is subject to compensation at the expense of the national treasury (Articles 2, 3, 4, 46 of the Law "On Basic Principles of Budget Law in the Kyrgyz Republic"). The moral damage caused by state bodies, local authorities, and their officials (Article 998 of the KR CC), and those caused by illegal actions of the bodies of inquiry, preliminary investigation, the prosecutor's office and the court (Article 999 of the KR CC), shall be recovered at the expense of the state budget (paragraph 1 of Article 170 and paragraph 2 of Article 225 of the KR CC).

According to the Decree No.11 of the Plenum of the Kyrgyz Republic Supreme Court “On some issues of judicial practice of applying the legislation on compensation for moral harm” dated November 4, 2004, the non-material benefits include the life and health of a citizen from birth. The Decree clarifies that moral damage, in accordance with Article 16 of the KR CC, shall be understood by moral and/or physical suffering experienced by a citizen through an unlawful violation, derogation or deprivation of personal property and non-property rights and non-material benefits; at the same time, physical suffering can be understood as the painful symptoms, negative feelings experienced by a citizen, for example, caused by bodily harm or another illegal action (inaction) against him/her. Moral suffering is understood to mean negative emotional experiences that indicate a breakdown in mental well-being and emotional balance that can be caused by an unlawful encroachment on life and health.

In accordance with Articles 16, 1028 of the KR CC, moral damages shall be compensated in monetary or other material form. In accordance with the requirements of paragraph 7 of Article 13 of the KR CPC, when determining the amount of compensation, the court proceeds from the criteria of justice and reasonableness. It takes into account the nature of the moral and/or physical suffering inflicted, the factual circumstances in which moral harm was inflicted, victim’s individual characteristics and other circumstances worthy of attention. The criterion of justice and reasonableness is considered to be met if the court has taken into account all the specific circumstances related to the violation of personal non-property rights of a citizen when determining the amount of compensation, and if the compensation established by the court to the sufficient extent satisfies the stated requirement.

According to the above-mentioned Decree of the Plenum of the Kyrgyz Republic Supreme Court, the court, when determining the amount of compensation for moral damage, should take into account the subjective assessment by a citizen of moral and/or physical suffering, as well as objective evidence of the same, in particular:

- 1) vital importance of non-property rights and non-material benefits (life, health, freedom, inviolability of the home, personal and family secrets, honor and dignity, etc.);
- 2) the degree of moral and/or physical suffering (caused by deprivation or restriction of liberty, bodily harm, death of close relatives, loss or limitation of disability, etc.).

In other words, in accordance with civil legislation and international legal obligations, the Kyrgyz Republic represented by the Kyrgyz Republic Ministry of Finance must provide compensation for material damages and compensation for moral damages related to the arbitrary deprivation of the life of the plaintiff’s brother Turdubek Akmatov which resulted from torture. In practice, the amount of moral compensation has been established. Thus, the Decree of the Kyrgyz Republic Provisional Government VP No.1 dated April 8, 2010 “On Provision of One-Time Financial Assistance”, the Kyrgyz Republic established the amount of compensation for the death of a citizen during a state of emergency. Thus, according to this Decree, the families of citizens who died during the April and June events of 2010 were paid one-time financial compensation in the amount of 1,000,000 (one million) soms from the national budget. However, Akmatov Turdubek died in peacetime and his family has been experiencing pain and suffering for over 12 years; in this regard, the plaintiff demands fair compensation, rather than that provided for by the practice of the state.

According to generally accepted standards, the amount of material damage resulting from the death of an average person is equal to the product obtained by multiplying the assumed average annual monetary income by the average life expectancy. Thus, according to the Demographic Yearbook of the Kyrgyz Republic for 2010-2014 by the Kyrgyz Republic National Statistical Committee, life expectancy at birth for men is 66.7 years. According to the Kyrgyz Republic Law “On State Pension Social Insurance”, men who have reached the age of 63 years have the right to a retirement pension. Considering that his brother died at 33 years of age and given his life expectancy and retirement, the state is obliged to compensate for the

average monthly salary for 30 years and the average monthly pension for 3.7 years. According to the Kyrgyz Republic Social Fund, the average pension for 2016 was 5,078 (five thousand seventy-eight) soms.

The total amount of compensation for the entire eleven years is 1,211,124 (one million two hundred eleven thousand one hundred twenty-four) soms. The compensation for the remaining 19 years is the product of multiplying the last established average monthly salary for the last known year - 2016 (14,847) by 228 months of life expectancy, totaling 3,385,116 (three million three hundred eighty-five thousand one hundred and sixteen) soms. The amount of pension payments, taking into account the expected life expectancy and time of retirement, is the product of multiplying the last established average monthly pension by 44 months of life expectancy, totaling 223,432 (two hundred and twenty-three thousand four hundred thirty-two) soms. The total amount of material damage is 4,819,672 (four million eight hundred nineteen thousand six hundred seventy-two) soms.

According to the psychological examination of the father of the plaintiff Suyunbai Akmatov, conducted by the psychologist E.V. Volochai, all members of his family experienced "extreme critical events that have a powerful negative impact, situations of threat that require an extraordinary effort from an individual to cope with the consequences of the impact ... They can take the form of unusual circumstances or a series of events that expose an individual to extreme, intense, extraordinary impact of a threat to the life or health of both the individual and his significant relatives, fundamentally disrupting the individual's sense of security. These situations can be of short duration but extremely powerful in terms of impact." Further, his father was diagnosed with "the disintegration of semantic systems under the influence of the very fact of the traumatic event that occurred - the death of his son and continuing stress caused by inability to achieve justice." According to the psychological examination, the material equivalent of the moral suffering inflicted on his father Suyunbai Akmatov was estimated at € 100,000 (one hundred thousand euros). In this regard, the moral suffering caused by the arbitrary deprivation of the life of his brother Turdubek Akmatov through torture in the police station, according to the gravity of the above-mentioned traumatic facts and against the background of psycho-emotional stress on his family members, lasting for more than 12 years, is estimated at € 100,000 (one hundred thousand euros).

The total amount of compensation for the death of the plaintiff's brother Turdubek Akmatov is € 100,000 (one hundred thousand euros) and 4,819,672 (four million eight hundred nineteen thousand six hundred seventy-two) soms.

Pursuant to Article 6 of the Kyrgyz Republic Law "On State Duty", this statement claim is exempt from state duty.

Thus, on the basis of the arguments set out in the statement of claim and guided by Articles 6, 20, 41 of the Kyrgyz Republic Constitution, Article 2 of the International Covenant on Civil and Political Rights, Articles 11, 16, 17, 50, 998, 1027 of the KR CC, Article 31 of the Kyrgyz Republic Law "On International Treaties of the Kyrgyz Republic", the plaintiff requested the Kyrgyz Republic Ministry of Finance to recover damages in the amount of 100,000 (one hundred thousand euros) and 4,819,672 (four million eight hundred nineteen thousand six hundred seventy-two) soms at the expense of the treasury of the Kyrgyz Republic.

During the trial, the representative of the plaintiff clarified the claims and requested to recover moral damages in the amount of 13,344,482 (thirteen million three hundred forty-four thousand eighty-two) soms from the Kyrgyz Republic Ministry of Finance.

Plaintiff Ch.S.Suyumbaev, duly informed about the time and place of the case hearing, did not appear in court, did not report the reasons for the non-appearance, and did not submit any statements regarding

Commented [ML1]: The court decision misspells the amount requested – it should read "thirteen million three hundred forty-four thousand four hundred eighty-two"

case consideration during the period of his absence. The court considers it possible to consider the case in his absence, since his representative is present.

At the hearing, the representative of the plaintiff S.A. Abdukhalilov, acting on the basis of a power of attorney dated August 26, 2016, upheld the stated claims and requested to satisfy the claims in full.

At the hearing, Ch.N. Talipov, the representative of the Kyrgyz Republic Ministry of Finance, the defendant, acted on the basis of a power of attorney dated May 8, 2018. He did not admit the claims and argued that the UN Human Rights Committee's View was inexpedient for application by courts. This case is subject to consideration in the framework of the Kyrgyz Republic legislation. According to paragraph 4 of Article 5 of the Optional Protocol to the International Covenant on Civil and Political Rights of December 16, 1966, Committee shall forward its views to the State Party concerned, and the views, therefore, are advisory in nature. In accordance with civil law, the right to compensation for moral damage is borne with the victim. The plaintiff is the brother of the deceased Turdubek Akmatov, while it was his father who filed a request to the UN Human Rights Committee. Since, in accordance with civil law, the right to compensation for moral damage is inseparably linked with the victim and is not part of the inheritance, this compensation is not paid to the heirs. In this regard, he requested that the claim be denied in full.

At the hearing, A.I. Zhumalieva, a representative of the Kyrgyz Republic Government, being a third party, acting on the basis of a power of attorney dated September 24, 2018, spoke out against the satisfaction of the plaintiff's claims, supported the objections of the representative of the Ministry of Finance, and requested to dismiss the claims.

At the hearing, D.Sh. Murzagazieva, a representative of the Kyrgyz Republic General Prosecutor's Office, being a third party, acting on the basis of a power of attorney dated August 29, 2018, also spoke out against satisfying the plaintiff's claims, supported the objections of the representative of the Ministry of Finance, and requested to dismiss the claims.

The court, having heard the explanations of the persons participating in the case, and having studied the materials of the case, has come to the following.

According to the information on the criminal case No.147-05-167, compiled by the Osh Oblast Prosecutor's Office on June 9, 2018 and signed by E. Ashirbaev, Deputy Prosecutor:

On May 4, 2005, the Uzgen Rayon Prosecutor's Office received a statement from S.Akmatov, a resident of Myrzaki village, Uzgen Rayon, requesting to take measures against the staff of the Myrzaki village police station under the Uzgen Rayon Department of Internal Affairs (DIA), who on May 03, 2005, beat his son T.Akmatov, which resulted in the death of the latter at his home on the same day. The review of S.Akmatov's statement established that on May 03, 2005 at about 3 p.m., the police station received a written statement from Gulnara Duishenbieva and oral statement from Kochkonbai Nurmamatov, residents of Myrzaki village, Uzgen Rayon, stating that on April 27, 2005, unknown persons committed theft of personal property in their home. For this reason, on May 3, 2005, Turdubek Akmatov, a resident of the same village, was called to the police station of Myrzaki village, Uzgen Rayon; he was released on the same day at about 7 p.m. and returned home at about 9.40 p.m.

The check on the initial statement, as explained by the father of the deceased, shows that on May 03, 2005, approximately in the period from 9.40 to 10.00 p.m., his son T. Akmatov was sitting in a courtyard under a canopy on the steps of the topchan (*a wooden couch*) and suddenly fell on the ground where he passed away without regaining consciousness.

Upon the death of T.Akmatov, A. Mamazhakyp uulu, an investigator of the Uzgen Rayon Prosecutor's Office, issued a decision on May 04, 2005 prescribing a forensic medical examination, which was entrusted to experts of the Uzgen Rayon Forensic Examination Center. According to the Report No. 19 dated May 25, 2005, the direct cause of T.Akmatov's death was a hemorrhage under the brain membrane and cerebellum tissue. Additionally, the examination discovered extensive foci of hemorrhage under the back surface, upper and lower lobes of the left lung, foci of spleen tissue hemorrhage, focal hemorrhages near the left renal tissue possibly caused by the impact of solid blunt objects simultaneously with an impact of a wide striking surface. Additionally, the corpse had abrasions of the parietooccipital region, hemorrhage under the soft cover of the occipital region, membrane hemorrhage of the occipital brain lobes, and focal hemorrhages in the left lobes of the cerebellum possible caused by blunt solid objects short before the death.

This was the reason for the Uzgen Rayon Prosecutor's Office to open criminal case No.147-05-97 under part 1 of Article 97 of the KR CC (Murder) on May 25, 2005.

Investigation into the criminal case was unable to identify those responsible for T.Akmatov's death, and therefore, the Oblast Prosecutor's Office extended the investigation period to 4 months, i.e. until September 25, 2005.

On September 5, 2005, an additional forensic examination was appointed by the A.Mamazhakyp uulu, an investigator of the Uzgen Rayon Prosecutor's Office, to be performed by the experts of the Jalalabad Oblast Forensic Medical Examination Bureau; the examination Report No.19 dated September 23, 2005, confirmed the findings of the previous examination, which did not exclude that the injuries on T.Akmatov's body were caused by falling from a step, with the provision that accurate opinion requires the exhumation of T.Akmatov's body, which was refused by his relatives. In this connection, on September 24, 2005, the Uzgen Rayon Prosecutor's Office, guided by part 1 of Article 221, paragraph 3 of the Kyrgyz Republic Criminal Procedure Code (KR CPC), suspended the proceedings due to the failure to identify the person to be charged as an accused.

Following numerous complaints and statements, on December 12, 2005, the criminal case was transferred to D.Satybaldiev, Head of the Sector of the Investigative Department of the Osh Oblast Prosecutor's Office, who, referring to Article 222 of the KR CPC, carried out operational investigative measures to identify the perpetrators.

Due to the fact that on April 6, 2006, the Kyrgyz Republic Presidents' Administration received a statement from S.Akmatov, the father and legal representative of the victim, containing the consent of the latter to the exhumation of the body of T. Akmatov, the Decision of D.Satybaldiev, Head of the Sector of Investigative Department of the Osh Oblast Prosecutor's Office, dated April 20, 2006, appointed a commission to conduct forensic medical examination to be performed by the experts of the Republican Scientific Research Institute of Forensic Examinations with the exhumation of the corpse, as authorized by the regional prosecutor.

According to the Report on FME No.102 dated June 26, 2006, injuries found on the victim's body were inflicted by blunt solid objects, and taking into account the one-sided localization, these injuries could have been caused by falling from the height of own body. In regards to severity of damage caused to health, the injuries in aggregate are regarded as severe damage to health on the basis of danger to life at the time of infliction, and are in a direct causal relationship with the death.

On February 19, 2007, the investigation under the criminal case was suspended due to the failure to identify a person to be charged on the basis of part 1 of Article 221, paragraph 3 of the KR CPC.

On May 16, 2007, A.Neforosnykh, Deputy Prosecutor General of the Kyrgyz Republic, made a decision to repeal the decision that suspended the criminal case.

On June 23, 2007, the criminal case was once again suspended due to the failure to identify the person to be charged on the basis of part 1 of Article 221, paragraph 3 of the KR CPC.

On February 28, 2008, I. Gafurov, Senior Prosecutor of the Department of the Kyrgyz Republic Prosecutor's General Office, repealed the decision that suspended the criminal case.

On March 17, 2008, a forensic medical examination was appointed and assigned to the Republican Forensic Medical Examination Bureau.

According to the Report of the commission-based forensic medical examination No.44 dated March 19, 2008, the injuries found on the victim's corpse were caused by the impact of a blunt solid object with a limited contact surface a few hours before death.

On April 12, 2008, the criminal case was suspended due to the failure to identify the person to be charged as an accused on the basis of part 1 of Article 221 paragraph 3 of the KR CPC.

On July 28, 2008, I. Gafurov, Senior Prosecutor of the Department of the Kyrgyz Republic Prosecutor General's Office, repealed the decision to suspend the criminal case.

On August 30, 2008, E.Karimov, Head of the Investigative Group of the Osh Oblast Prosecutor's Office, terminated the criminal prosecution of employees of the Myrzaki police station B. Muminov, N. Toktomusayev and others due to the absence of corpus delicti, in accordance with parts 1 and 2 of Article 28 of the KR CPC.

On September 4, 2008, the criminal case was transferred to the Investigative Department of Osh Oblast Department of Internal Affairs for further investigation, which resulted in the suspension of the case by investigator N. Ergeshov on September 06, 2008 due to the failure to identify the person to be charged as an accused, in accordance with part 1 Article 221, paragraph 3 of the KR CPC.

On November 17, 2008, I. Gafurov, Senior Prosecutor of the Department of the Kyrgyz Republic Prosecutor General's Office, repealed the decision to terminate the criminal prosecution of the said persons and suspend the criminal case.

On January 12, 2009, R. Sapaev, Senior Investigator of the Investigative Department of the Interdepartmental Investigative Unit at the Kyrgyz Republic Ministry of Internal Affairs, terminated the criminal prosecution against employees of Myrzaki police station B. Muminov, N. Toktomusaev and others due to the absence of corpus delicti in their actions under part 1 of Article 28, paragraph 2 of the KR CPC; on the same day, investigation of the criminal case was suspended on the basis of part 1 of Article 221, paragraph 3 of the KR CPC.

On May 27, 2009, the above-mentioned decision made by the Prosecutor's General's Office to suspend the criminal case was repealed and the case was transferred to the Osh Oblast Prosecutor's Office for additional investigation.

On July 8, 2009, K.Kadyrov, an investigator of the Investigative Department of the Osh Oblast Office of Internal Affairs, suspended the proceedings in the criminal case under part 1 of Article 221, paragraph 3 of the KR CPC.

On July 25, 2011, the decision to suspend the criminal case was repealed by the Prosecutor General's Office and remanded to the Osh Oblast Prosecutor's Office for additional investigation.

On August 16, 2011, the Oblast Prosecutor's Office entrusted the further investigation to the Investigative Department of the Osh Oblast Office of Internal Affairs.

On September 16, 2011, on the basis of the investigation results, the criminal case was suspended under part 1 of Article 221, paragraph 3 of the KR CPC.

On August 1, 2012, the decision to suspend the criminal case was repealed by the Oblast Prosecutor's Office and remanded to the Investigative Department of the Osh Oblast Office of Internal Affairs for additional investigation.

On September 2, 2012, on the basis of the investigation results, the criminal case was again suspended under part 1 of Article 221, paragraph 3 of the KR CPC.

On August 19, 2016, the decision to terminate criminal prosecution of some persons and to suspend the criminal case was canceled by the General Prosecutor's Office of the Republic and remanded to the Osh Oblast Prosecutor's Office for additional investigation.

On August 27, 2016, the Oblast Prosecutor's Office instructed T.Kenzhebaev, Senior Investigator of the Investigative Department of Investigative Unit of the Osh Oblast Prosecutor's General Office to conduct further investigation of the criminal case and report on results by September 27, 2016.

On September 27, 2016, on the basis of the investigation results, the criminal case was suspended under part 1 of Article 221, paragraph 3 of the KR CPC.

On April 26, 2017, the criminal case was remanded to the Investigative Department of Main Unit of the Osh Office of the Kyrgyz Republic State Committee on National Security with a written instruction under part 2 of Article 34, paragraph 2 and Article 222 of the KR CPC.

It should be noted that the Decision of A.Mamazhakyp uulu, an investigator of the Uzgen Inter-rayon Prosecutor's Office, on May 27, 2005, recognized the father of the plaintiff and the deceased Suyunbai Akmatov as the victim in the criminal case instituted upon the death of his son.

Thus, it follows from the chronology of actions of the law enforcement bodies that the criminal case opened upon the death of the plaintiff's brother was repeatedly suspended because the perpetrators responsible for Turdubek Akmatov's death could not be identified, and Osh Oblast Prosecutor's Office and the Kyrgyz Republic Prosecutor's Office repeatedly cancelled decisions to suspend the proceedings.

At the same time, the court considers it necessary to specifically recall the reasons for the last cancellation by the General Prosecutor's Office of the decision to suspend the criminal proceedings, which are as follows. The Decision of the Kyrgyz Republic General Prosecutor's Office dated August 19, 2016, which annulled the Decision of Z.Yrysmamatov, an investigator of the Investigative Unit of the Osh Oblast Office of Internal Affairs, dated September 16, 2011, to terminate the criminal prosecution of the officials of the Uzgen Rayon Department of Internal Affairs B.Mominov and N.Toktomusaev, and the Decision of O.Abdykakharov, an investigator of the Investigative Unit of the Osh Oblast Office of Internal Affairs, dated September 02, 2012, to suspend the criminal investigation, states the following: the study of the materials of the case file showed that the investigation was conducted in violation of the requirements of Article 19 of the KR CPC, and was not objective, comprehensive and complete; the circumstances of the case give reasonable grounds to believe that T. Akmatov was beaten by N.Toktomusaev, an officer of the Uzgen Rayon DIA in ROVD, as a result of which there were injuries that caused his death.

However, despite the repeated annulment of the investigators' decisions to suspend the investigation of the criminal case and to terminate criminal prosecution of the said individuals, the investigation has not yet been completed, and the persons responsible for T. Akmatov's death have not been brought to justice. At the same time, the fact of the death of the plaintiff's brother T.Akmatov due to violent actions is considered established, since there are several medical examinations in the criminal case materials confirming this fact.

Due to the fact that the investigation of the criminal case has not been completed and the persons responsible for his son's death have not been brought to justice, and having exhausted all domestic remedies available, the father of the deceased Suyunbai Akmatov appealed to the UN Human Rights Committee with an individual complaint regarding violations by the Kyrgyz Republic of Turdubek Akmatov's rights provided for in Articles 6 (1) and 7 of the International Covenant on Civil and Political Rights (ICCPR), considered separately and in conjunction with Article 2 (3) of the Covenant.

The UN Human Rights Committee's View No.2052/2011 adopted at the 115th session in the period from October 19 to November 6, 2015, stated the Kyrgyz Republic was responsible for the arbitrary deprivation of life and torture of the plaintiff's brother Akmatov Turdubek.

In paragraph 10 of its View, the UN Human Rights Committee notes that the Kyrgyz Republic is under the obligation to take measures to eliminate obstacles to providing compensation under a civil claim, independently of any related criminal proceedings — and to provide full reparation to persons, whose rights have been violated, and adequate compensation and appropriate measures of satisfaction. Paragraph 11 of the said View states: "Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to Article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction, the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views".

On June 24, 2016, plaintiff's father Suyunbai Akmatov, filed a petition to the Kyrgyz Republic Prime Minister requiring the Government to fulfill the View of the UN Human Rights Committee in the form of a monetary compensation.

On August 15, 2016, the Kyrgyz Republic Government Office reported that the petition had been referred to the Kyrgyz Republic Prosecutor General with the instruction to review the same and report the respective results.

According to the Notice No. 8/3-87-16 of the Kyrgyz Republic Prosecutor General dated December 12, 2016, compensation issues are to be considered by court in civil procedure in accordance with the requirements of the Kyrgyz Republic Civil Procedure Code on the basis of a statement by a party concerned.

Having examined the documents submitted by the plaintiff and the circumstances of the case, the court comes to the following conclusion.

According to Article 16 of the Kyrgyz Republic Constitution, human rights and freedoms are inalienable and belong to each person from birth. Human rights and freedoms are of superior value. They act directly and define the meaning and the content of the activity of legislative, executive power and self-governance bodies.

Also, in accordance with subparagraphs 7, 8 of paragraph 5 of Article 20 of the Kyrgyz Republic Constitution, a right established by this Constitution such as the right to compensation by the state of the harm caused by the illegal actions of state bodies, local self-government bodies and their officials acting in official capacity, and the right to judicial protection shall not be subject to any limitation whatsoever.

Also, according to Articles 21, 22 of the Kyrgyz Republic Constitution, everyone has the inalienable right to life. No one can be arbitrarily deprived of life. The death penalty is prohibited. No one may be subjected to torture or other inhuman, cruel or degrading treatment or punishment.

Also according to Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, to which the Kyrgyz Republic acceded by law dated July 26, 1996, "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. This definition does not encompass pain or suffering arising exclusively from, inherent in or incidental to lawful sanctions.

Pursuant to Article 6 of the Kyrgyz Republic Constitution, international treaties to which the Kyrgyz Republic is a party that have entered into force under the established legal procedure and also the universally recognized principles and norms of international law shall be the constituent part of the legal system of the Kyrgyz Republic.

In line with Article 31 of the Kyrgyz Republic Law "On International Treaties of the Kyrgyz Republic", international treaties to which the Kyrgyz Republic acceded shall be subject to strict compliance by the Kyrgyz Republic in accordance with the international law and laws and regulations of the Kyrgyz Republic.

In accordance with Article 26 of the Vienna Convention on the Law of Treaties, every treaty in force is binding upon the parties to it and must be performed by them in good faith (the Kyrgyz Republic acceded the Convention in accordance with the Kyrgyz Republic Law No.49 dated July 5, 1997).

As it follows from the UN Human Rights Committee's View, the Committee was guided by the provisions of the Optional Protocol to the International Covenant on Civil and Political Rights. In particular, clause 4 of Article 5 of the Optional Protocol, according to which, subject to the provisions of Article 3, the Committee shall forward its views to the State Party concerned alleged to have violated any provisions of the Covenant. The receiving State shall, within six months, submit to the Committee written explanations or statements clarifying the matter and any measures that may have been taken by that State.

The Kyrgyz Republic acceded to the Optional Protocol to the International Covenant on Civil and Political Rights by the Resolution No.1406-XII of the Kyrgyz Republic Jogorku Kenesh dated January 12, 1994. Thus, our state recognized the competence of the UN Human Rights Committee to receive and consider communications from persons subject to its jurisdiction who claim to be victims of a violation by this State party of any of the rights set forth in the Covenant.

Pursuant to Article 6 of the International Covenant on Civil and Political Rights, ratified by the Resolution No.1406-XII of the Kyrgyz Republic Jogorku Kenesh dated January 12, 1994, the right to life is the inalienable right of every person. This right is protected by law. No one can be arbitrarily deprived of life.

In accordance with Article 7 of the same Covenant, no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.

Also, according to paragraph 3 of Article 2 of the same Covenant, each State party to the Covenant undertakes: "a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) to ensure that the competent authorities shall enforce such remedies when granted."

In addition, according to Articles 2, 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Kyrgyz Republic acceded to the same by the law dated July 26, 1996), Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

By acceding to the International Covenant on Civil and Political Rights and the Optional Protocol thereto, the Kyrgyz Republic assumed obligations to implement the views of the UN Human Rights Committee, and the court finds reasonable the grounds for partial satisfaction of the claim.

As for the question whether the plaintiff, being the brother of the deceased, is eligible for moral compensation for the harm, the court comes to the following conclusion.

According to Article 16 of the Kyrgyz Republic Civil Code, if a citizen has been inflicted moral damage (physical or moral suffering) by actions violating personal non-property rights or infringing on non-material benefits or personal non-property rights, as well as in other cases provided by law, the court may require that the offender provide monetary compensation for the damage.

Also, in accordance with Article 993 of the KR CC, the harm caused to a person or property of a citizen, as well as damage caused to a legal entity, is subject to full compensation by the person who caused the harm. The law may impose the obligation to compensate for harm on a person who is not the cause of harm.

By virtue of Article 998 of the KR CC, harm caused to a citizen or legal entity by illegal actions (inaction) of state bodies, local self-government bodies or their officials, including by acts of the state body or local self-governance body, which contradict the legislation, shall be recovered. The related harm shall be compensated at the expense of the relevant state treasury (paragraph 2 of Article 225), the treasury of the local community (paragraph 2 of Article 227).

In this case, the owner of the state treasury is the Kyrgyz Republic Ministry of Finance and, therefore, is the defendant in this lawsuit.

As mentioned above, the investigator's decision recognized Suyumbai Akmatov, the father of the deceased, as a victim in the case involving the death of his son resulting from violent actions of the law enforcement bodies, and thus, eligible for compensation for moral damage.

However, victim Suyumbai Akmatov died, as evidenced by the death certificate issued by the registry office of Uzgen rayon, Osh oblast, dated July 19, 2016. The certificate indicates that the S.Akmatov's death on July 14, 2016 was a result of acute cardiovascular insufficiency.

Plaintiff Chyngyz Suyumbaev is the son of S.Akmatov and the brother of T.Akmatov, which is confirmed by an extract from the birth registration record, which reads "Suyumbai Akmatov" in the "father" line.

In this matter, the court considers it is necessary to be guided by the UN Committee's View, which states that persons whose rights have been violated independently of any related criminal proceedings have the right to compensation for moral damage. Thus, the arguments of the defendant that the decision of investigator A. Mamazhakyp uulu dated May 27, 2005 recognized Suyumbai Akmatov as a victim, and only he can be the plaintiff, is considered unfounded by the court. The court believes that the plaintiff, being the sibling brother of the deceased, has also experienced moral suffering. However, this circumstance should affect the amount of compensation.

Evidence of moral suffering caused to the plaintiff by the death of his close relative is supported by the report on suffering and moral harm, compiled by T.K. Asanov, a forensic psychiatry specialist, candidate of medical sciences. In particular, according to his report, in the period from 2005 to 2009, Ch. Suyumbaev was experiencing emotional stress associated with his brother's death resulting from the alleged torture. The impact of stressors in the form of the death of his brother and an unresolved investigation into alleged torture has been accompanied by the infliction of physical and moral suffering to Ch.Shuyumbaev, which intensity in its peaks reached a degree of significant suffering according to the scale of the institution of

personality and mental health. The physical and mental suffering found in Ch. Suyumbaev are evidence of moral damage caused to him by: a) the death of his brother and b) the unresolved situation associated with the investigation into the alleged torture.

Thus, the court comes to the conclusion that the inadequate work of the law enforcement bodies of the Kyrgyz Republic on investigating the death of Akmatov has more serious consequences for society and the state than the satisfaction of the claim, to which is reaffirmed by the UN Human Rights Committee.

The materials of the case make it obvious that for 13 years, the plaintiff's family has not been able to achieve justice and bring perpetrators to justice. Moreover, the court notes the inhumanity that the family of the deceased had to face due to repeated body exhumation, which did not bring any positive results. This situation negates the results of state efforts to strengthen the rule of law or to build trust in law enforcement bodies.

Given the nature and circumstances of the case, the court considers it necessary to recover from the defendant in favor of the plaintiff 200,000 soms as moral damage.

Under such circumstances, claims presented by Ch.S. Suyumbaev are subject to partial satisfaction.

Based on the above, guided by Articles 198-202, 211 of the KR Civil Procedure Code, the court

DECIDED as follows:

Partially satisfy the claim presented by Chyngyz Suyumbaevich Suyumbaev against the Kyrgyz Republic Ministry of Finance on compensation of moral damage.

Recover from the Kyrgyz Republic Ministry of Finance in favor of Chyngyz Suyumbaevich Suyumbaev 200,000 (two hundred thousand) soms as compensation for moral damage.

Dismiss the remaining items of the claim.

The decision can be appealed to the Bishkek City Court within 30 days.

Chair /signature affixed/

This is an authentic copy

Venera Zhanybek kyzy