
AMICUS BRIEF IN SUPPORT OF MS. GULZHAN PASANOVA

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Submitted by
The Clooney Foundation for Justice
Before the Osh Regional Court

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I. INTRODUCTION AND STATEMENT OF INTEREST

1. The Clooney Foundation for Justice (“CFJ”) is an organization founded by George and Amal Clooney to advocate for justice through accountability for human rights abuses around the world. TrialWatch is a CFJ initiative that monitors and grades the fairness of trials of vulnerable people around the world, including journalists, women and girls, religious minorities, LGBTQ persons, and human rights defenders. Using this data, TrialWatch advocates for victims and is developing a Global Justice Ranking measuring national courts’ compliance with international human rights standards.

2. As part of CFJ’s TrialWatch initiative, the American Bar Association’s (“ABA”) Center for Human Rights (“CHR”) monitored the trial of Gulzhan Pasanova (“Ms. Pasanova”), a domestic violence survivor, charged with fatally injuring her husband.¹ The trial monitor attended and reported on all proceedings before the Osh City Court in the Republic of Kyrgyzstan (“Kyrgyzstan”), which resulted in a conviction on March 5, 2020.

3. On April 16, 2020, TrialWatch published a Fairness Report (“Fairness Report”), written by CHR staff, summarizing and analyzing the trial monitor’s observations and court filings. A copy of the report is appended to this brief. *See* Appendix A. The Fairness Report concludes that Ms. Pasanova’s trial was marred by serious international human rights law violations that affected the outcome of her case and caused her significant harm. It therefore assigns the trial a grade of D (on a scale of A, B, C, D and F).² Among other deficiencies identified in the Fairness Report, the trial court prevented Ms. Pasanova from calling witnesses and presenting expert evidence to support her defense and restrained her in a metal cage for the duration of the trial, in violation of her rights under the International Covenant on Civil and Political Rights of 1966 (“ICCPR”). The Fairness Report also explains that Ms. Pasanova’s trial was infected by gender bias and discrimination, contravening her right to equality before the law under both the ICCPR and the Convention on the Elimination of all Forms of Discrimination Against Women (“CEDAW”).

¹ Kyrgyzstan v. Gulzhan Pasanova, Guilty Verdict of Osh City Court (March 5, 2020).

² TrialWatch Fairness Report for Kyrgyzstan v. Gulzhan Pasanova, Clooney Foundation for Justice Initiative, 2 (April 2020).

4. Based on the Fairness Report and the underlying materials, including the monitor's notes, CFJ submits this amicus brief in support of Ms. Pasanova's appeal and urges the Osh Regional Court to take steps to remedy the fair-trial violations to which Ms. Pasanova was subjected. Specifically, the Osh Regional Court should overturn the trial court's verdict and re-examine Ms. Pasanova's case, taking into account all relevant facts about the violence to which Ms. Pasanova has been subjected.

II. FACTUAL BACKGROUND

A. Mr. Isakov's History of Domestic Violence

5. Ms. Pasanova is a 29-year-old mother of two young daughters. She was married to her husband, Umutbek Isakov, 46, for seven years before his death and was a stepmother to his two teenage children from a prior marriage.³ Evidence presented at trial established that, throughout their marriage, Mr. Isakov subjected Ms. Pasanova to severe psychological and physical abuse, at times fueled by alcohol.⁴ This was confirmed by Mr. Isakov's teenage children, who testified at trial that their father abused alcohol and that he and Ms. Pasanova fought often.⁵

6. In 2017, Mr. Isakov beat Ms. Pasanova so severely that she lost consciousness and required hospitalization.⁶ The medical examination after Ms. Pasanova was arrested for killing Mr. Isakov identified multiple bruises on her body and a large scar on her finger from previous incidents.⁷

7. Ms. Pasanova testified that she stayed home for months at a time because she was embarrassed to be seen with bruises and scratches from her husband's beatings.⁸ She

³ Indictment on Suspicion of Gulzhan Manasovna Pasanova of Having Committed a Crime Covered by Paragraph 1, Part 3 of Article 138 of the Kyrgyz Criminal Code (December 23, 2019).

⁴ TrialWatch Fairness Report, at 10-11.

⁵ Notes from Trial Monitor (February 11, 2020).

⁶ Regional Center of Psychiatric Health of Osh, Report No. 756 of Medical Examination of Gulzhan Manasovna Pasanova (November 26, 2019) [hereafter Pasanova Psychiatric Examination].

⁷ Medical Examination Report No. 1986 of the Osh Regional Office of Medical Examiner, Gulzhan Pasanova (November 22, 2019).

⁸ Notes from Trial Monitor (February 11, 2020).

also testified that when she was hospitalized for injuries, she did not disclose their true source, and instead — due to Mr. Isakov’s threats — falsely reported that she had her hurt herself by falling.⁹

8. Both Ms. Pasanova and her stepdaughter testified at trial that Mr. Isakov was very jealous.¹⁰ He monitored Ms. Pasanova’s communication and forced her to abandon her education to be a stay-at-home wife.¹¹ When Mr. Isakov finally allowed Ms. Pasanova to get a job, he insisted on driving her to and from work.¹²

B. Ms. Pasanova Strikes Mr. Isakov During a Violent Altercation

9. On November 14, 2019, Mr. Isakov allegedly saw Ms. Pasanova arriving to work in a car with two men.¹³ He assumed Ms. Pasanova was being unfaithful, and hit her in the face and took her phone away.¹⁴

10. On the evening of November 19, 2019, Ms. Pasanova’s husband arrived home around 10:00 p.m. He was drunk and accused Ms. Pasanova of infidelity.¹⁵ An argument ensued,¹⁶ during which Mr. Isakov threatened Ms. Pasanova and threw a kitchen knife at her but missed.¹⁷ The confrontation continued to escalate and Mr. Isakov hit Ms. Pasanova on the head.¹⁸ When Ms. Pasanova fled to an adjoining balcony, she heard Mr. Isakov yell that

⁹ Notes from Trial Monitor (March 5, 2020).

¹⁰ Notes from Trial Monitor (February 11, 2020).

¹¹ *Id.*

¹² Notes from Trial Monitor (March 5, 2020).

¹³ Ms. Pasanova’s brother testified that Mr. Isakov told him that Ms. Pasanova was drunk and in a company of “unknown men” when he saw her. *See Pasanova Guilty Verdict*, at 3.

¹⁴ *Id.*; Notes from Trial Monitor (February 11, 2020). Ms. Pasanova’s brother testified that Mr. Isakov thought that one of the men in the car was “Nazar,” with whom he suspected his wife was having an affair. Ms. Pasanova testified that “Nazar” was an old acquaintance with whom she had recently reconnected and was discussing the possibility of renting a location for her own beauty salon.

¹⁵ *Pasanova Guilty Verdict*, at 3. Ms. Pasanova’s brother testified that he saw Mr. Isakov drunk and in distress after attempting to investigate Ms. Pasanova’s alleged infidelity. *See Notes from Trial Monitor* (February 24, 2020).

¹⁶ *See Pasanova Indictment; Pasanova Guilty Verdict*.

¹⁷ *See Pasanova Indictment; Pasanova Guilty Verdict*.

¹⁸ *Pasanova Interrogation Record* (December 20, 2019).

he was coming to kill her.¹⁹ Fearing that he would beat her again, Ms. Pasanova picked up a steel reinforcing bar used for home repairs and returned to the living room.²⁰ She struck her husband several times on the head with the bar until he fell.²¹ At trial, Ms. Pasanova testified that she did not intend to kill her husband and that, when she hit him, she was so scared and enraged that she was unable to restrain herself.²²

11. Ms. Pasanova tried to help her husband get up, but he was unconscious.²³ She rushed to her neighbor (her brother-in-law) for help, and together they called an ambulance.²⁴ Ms. Pasanova's husband was pronounced dead a few hours later at the Osh City Hospital.²⁵

C. Ms. Pasanova's Trial

12. Ms. Pasanova was arrested at her husband's funeral and detained pending trial.²⁶ After a month-long investigation, she was indicted on December 23, 2019, on charges of recklessly causing grievous bodily harm to her husband that resulted in his death under Article 138, part 3.1 of the Kyrgyz Criminal Code.²⁷

13. Ms. Pasanova's trial began on February 11, 2020 and consisted of three brief sessions and closing arguments, lasting no more than six hours total.²⁸ Throughout the trial, Ms. Pasanova was kept in a metal cage and subjected to verbal attacks by her husband's

¹⁹ Pasanova Indictment.

²⁰ See Pasanova Indictment; Pasanova Guilty Verdict.

²¹ Pasanova Indictment; Pasanova Interrogation Record (December 20, 2019).

²² Pasanova Guilty Verdict, at 2.

²³ *Id.*

²⁴ Pasanova Indictment.

²⁵ *Id.*

²⁶ TrialWatch Fairness Report, at 12; Pasanova Guilty Verdict.

²⁷ Pasanova Indictment.

²⁸ TrialWatch Fairness Report, at 13.

relatives who accused her of being unfaithful and of killing her husband to hide a purported affair.²⁹

14. The prosecutor's case relied on portraying Ms. Pasanova as a bad and ungrateful wife who would not have remained in her marriage if Mr. Isakov had been abusive.³⁰ During closing arguments, the prosecutor asked: "how could [Ms. Pasanova] live with [Isakov] and bear his children if she speaks so badly of him?"³¹ The prosecutor argued that Ms. Pasanova "chose Mr. Isakov herself," and "[i]f you do not want to live with your husband, get a divorce. Why kill him then?"³² The prosecutor also repeatedly interrupted Ms. Pasanova's testimony with insults and yelled at her and defense counsel on numerous occasions.³³ The judge seldom intervened, and the prosecution continued its inappropriate and discriminatory behavior throughout the trial.³⁴

15. In her trial testimony, Ms. Pasanova admitted that she hit her husband, but argued that she acted in self-defense and that, in any event, the alleged offense should be requalified under Article 141 of the Criminal Code because she was in a state of extreme emotional distress at the time of the incident.³⁵

16. The court largely ignored Ms. Pasanova's arguments and repeatedly denied her requests to develop the evidentiary record needed to support them. For instance, the court rejected defense counsel's request for a comprehensive psychiatric examination to assess whether Ms. Pasanova's experience as a survivor of domestic violence could have given rise to a state of extreme emotional distress on the night that she hit her husband.³⁶ The court instead relied solely on a psychiatric exam conducted during Ms. Pasanova's pretrial detention. That examination, however, narrowly focused on: (i) whether Ms. Pasanova

²⁹ Interview with Trial Monitor (March 24, 2020); TrialWatch Fairness Report, at 21.

³⁰ TrialWatch Fairness Report, at 28.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 24-25.

³⁴ *Id.*

³⁵ *Id.* at 13.

³⁶ See Judicial Order Regarding the Request to Conduct a Comprehensive Psychiatric Examination of Gulzhan Pasanova (March 5, 2020).

suffered from any psychiatric illness and was conscious of and answerable for her actions at the time of the incident; (ii) whether Ms. Pasanova suffered from any psychiatric illness at the time of examination; and (iii) whether she should be considered criminally sane or needed to undergo involuntary psychiatric treatment.³⁷ Critically, the psychiatric examination did not address whether Ms. Pasanova’s extended experience of domestic abuse could have caused her to experience extreme emotional distress during the altercation with Mr. Isakov that ended in his death. Nevertheless, the court rejected Ms. Pasanova’s request for a new comprehensive psychiatric examination on grounds that such an evaluation was unnecessary because there were no “new issues” to examine.³⁸

17. In addition, the court denied defense counsel’s motions to call key fact witnesses, such as Ms. Pasanova’s neighbors and relatives, who could testify about the history of domestic violence in the household.³⁹ The court also refused Ms. Pasanova’s request to call the ambulance workers who came to her apartment on the night of the accident and who could have testified to her state of mind at that time.⁴⁰ In both cases, the court denied the motions on the grounds that the testimony was irrelevant to the case.⁴¹

18. By contrast, the court did not impede the prosecution from presenting its case, which focused on proving that Ms. Pasanova caused the injuries that led to her husband’s death—a fact that was not in dispute. The prosecution argued that Ms. Pasanova’s claims of domestic violence were irrelevant and false. The prosecutor also opposed Ms. Pasanova’s motion for a comprehensive psychiatric evaluation.

³⁷ See Pasanova Psychiatric Examination.

³⁸ Judicial Order Regarding the Request to Conduct a Comprehensive Psychiatric Examination of Gulzhan Pasanova (March 5, 2020).

³⁹ On the first day of Ms. Pasanova’s trial, defense counsel moved to call as witnesses several of Ms. Pasanova’s neighbors, who had knowledge of the abuse from discussions with Ms. Pasanova and from seeing her injuries. Counsel believed that these individuals would have testified that Mr. Isakov abused Ms. Pasanova on numerous occasions in the past. See TrialWatch Fairness Report, at 18.

⁴⁰ *Id.*

⁴¹ *Id.*

19. On March 5, 2020, the court found Ms. Pasanova guilty and sentenced her to nine years in prison and a large fine.⁴²

III. MS. PASANOVA'S TRIAL VIOLATED INTERNATIONAL LAW

20. The rights to a fair trial and to equality before the law are fundamental tenets of international human rights law.⁴³ Article 14(1) of the ICCPR guarantees equality before courts and tribunals and the right to a fair and public hearing.⁴⁴ Article 15 of CEDAW similarly provides that women and men must be equal before the law and benefit from equal protection of the law.⁴⁵ Kyrgyzstan ratified the ICCPR in 1994 and CEDAW in 1997 and must fulfill its obligations under these treaties "in good faith."⁴⁶

21. Kyrgyzstan has recognized the binding nature of international human rights law. Article 6 of the Kyrgyz Constitution recognizes that international treaties form part of the law of Kyrgyzstan.⁴⁷ The Constitution also guarantees individual rights and freedoms in accordance with international treaties to which Kyrgyzstan is a party and universally recognized principles and norms of international law.⁴⁸

22. For the reasons given below and in the attached Fairness Report, Ms. Pasanova's trial violated Kyrgyzstan's obligations under the ICCPR and CEDAW. *First,*

⁴² Pasanova Guilty Verdict.

⁴³ Universal Declaration of Human Rights arts. 7 and 10, G.A. Res. 217 (III) A, U.N. Doc. A/RES/3/217(III) (Dec. 10, 1948) (recognizing that "[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law" and that "[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him..."); see Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 2. (asserting that "[t]he right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law.").

⁴⁴ ICCPR, Art. 14(1) ("All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.").

⁴⁵ CEDAW, Art. 15(1) ("States Parties shall accord to women equality with men before the law.").

⁴⁶ See UN Human Rights, Office of the High Commissioner, Ratification Status for Kyrgyzstan, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=93&Lang=EN.

⁴⁷ Constitution of Kyrgyzstan, Art. 6. (June 27, 2010), <http://cbd.minjust.gov.kg/act/view/ru-ru/202913?cl=ru-ru>.

⁴⁸ *Id.*, Art. 40.

Kyrgyzstan violated Ms. Pasanova's right to a fair trial under Article 14 of the ICCPR by preventing her from presenting expert testimony and calling fact witnesses to support her defense. *Second*, by keeping her in a metal cage throughout her trial, Kyrgyzstan failed to treat Ms. Pasanova in accordance with the presumption of innocence to which she is entitled under international law. *Third*, Ms. Pasanova's trial was infected by gender stereotypes and discrimination, violating her rights under the ICCPR and CEDAW to equal treatment under the law.

A. The Trial Court Violated Ms. Pasanova's Right to Equality of Arms

23. A key component of the right to a fair trial under Article 14 of the ICCPR is respect for the principle of equality of arms.⁴⁹ The United Nations Human Rights Committee ("HR Committee"), the body of independent experts charged with monitoring state parties' implementation of the ICCPR, has explained that the principle of equality of arms requires states to permit criminal defendants to present evidence on equal footing with the prosecution.⁵⁰ Relatedly, Article 14(3) of the ICCPR guarantees accused individuals the right to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them.⁵¹

24. Ms. Pasanova's trial violated the principle of equality of arms and the right to call and examine witnesses because the trial court (i) prevented Ms. Pasanova from obtaining and presenting a comprehensive psychiatric examination addressing her state of mind at the time of the altercation that resulted in Mr. Isakov's death; and (ii) refused to call and examine witnesses knowledgeable about the domestic violence Ms. Pasanova suffered throughout her marriage or her demeanor on the night of the incident.

⁴⁹ *Yves Morael v. France*, Comm. No. 207/1986, U.N. Doc. Supp. No. 40 (A/44/40), para. 9.3. (1989) (describing that "the concept of a fair hearing in the context of article 14 (1) of the Covenant should be interpreted as requiring a number of conditions, such as equality of arms . . .").

⁵⁰ Human Rights Committee, General Comment No. 32., para. 13. (noting that the equality of arms "means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.")

⁵¹ ICCPR, Art. 14(3)(e). The Human Rights Committee usually considers violations of Article 14(3)(e) together with the equality of arms principle.

1. The Trial Court Violated Ms. Pasanova's Right to Obtain and Present Expert Evidence

25. Both the equality of arms principle and the right to call and examine witnesses include the right to present expert witnesses.⁵² Thus, in *Fuenzalida v. Ecuador*, the HR Committee found that a trial court violated a defendant's right to equality of arms when it rejected his request for expert testimony "of crucial importance" without adequate justification.⁵³ So too here.

26. As explained above, the expert psychiatric analysis introduced into evidence at Ms. Pasanova's trial did not address whether Ms. Pasanova's extended experience with domestic violence could have affected her state of mind during the altercation with her husband that resulted in his death.⁵⁴ Indeed, the majority of the psychiatrist's findings, which are only a page and a half, focus on the accused's demeanor during the examination.⁵⁵ With respect to what occurred on the night in question, the report merely repeats the accused's account of events and concludes that: "At the time of the alleged offence, the examinee was able to understand the nature and consequence of her actions and control them."⁵⁶ The report does not explain the basis for that determination and does not consider whether Ms. Pasanova's extended experience of domestic abuse could have caused her to experience extreme emotional distress during the altercation with Mr. Isakov that ended in his death.⁵⁷

⁵² For example, in *Dudko*, the Human Rights Committee "observ[ed] that when a defendant is not given an opportunity equal to that of the State party in the adjudication of a hearing bearing on the determination of a criminal charge, the principles of fairness and equality are engaged." *Dudko v. Australia*, Comm. No. 1347/2005, U.N. Doc. CCPR/C/90/D/1347/2005, para. 7.4. (2007).

⁵³ See, e.g., *Fuenzalida v. Ecuador*, Comm. No. 480/1991, U.N. Doc. CCPR/C/57/D/480/1991, para. 9.5. (1996) (finding that "the court's refusal to order expert testimony of crucial importance to the case . . . constitutes a violation of article 14, paragraphs 3 (e) and 5, of the [ICCPR]."); *Khomidova v. Tajikistan*, Comm. No. 1117/2002, U.N. Doc. CCPR/C/81/D/1117/2002, para. 6. (2004) (finding a violation of Article 14(3)(e) where the court rejected the defense's request for a medical examination of the accused to determine whether the authorities had subjected him to torture).

⁵⁴ See *supra* para. 16.

⁵⁵ Pasanova Psychiatric Examination.

⁵⁶ *Id.*

⁵⁷ *Id.* (noting that "in 2017, the [Ms. Pasanova] suffered an injury with loss of consciousness and vomit due to beatings inflicted by her husband. She underwent in-patient treatment at a private health care facility. Afterwards, she had repeated micro traumas. The examinee feels bad in crowded and noisy places."). See also TrialWatch Fairness Report, at 11.

27. Despite this gap in the record, which was critical to Ms. Pasanova’s motion to have the charges against her requalified, the trial court denied the defense’s request for a comprehensive psychiatric examination. The trial court erroneously held that the psychiatric report generated during the investigation phase was “complete” and that there were no “new issues” that required expert determination.⁵⁸ This ruling interfered with Ms. Pasanova’s ability to present a defense, in violation of the equality of arms principle. Had Ms. Pasanova been able to introduce expert evidence about her state of mind at the time of the event, she may have been able to demonstrate that her actions were caused by an extreme emotional disturbance. By depriving Ms. Pasanova of this opportunity, the trial court violated Ms. Pasanova’s right to a fair trial under international law.⁵⁹

2. The Trial Court Violated Ms. Pasanova’s Right to Call and Examine Fact Witnesses

28. The trial court also violated Ms. Pasanova’s rights to equality of arms and to call and examine witnesses by refusing to compel the testimony of Ms. Pasanova’s neighbors and ambulance workers who attended to Mr. Isakov.⁶⁰ In *Grant v. Jamaica*, the HR Committee found that a trial court violated articles 14(1) and (3)(e) of the ICCPR by failing to “adjourn[...] the trial and issue[...] a subpoena to secure the attendance of [a key witness that would have proven the defendant’s alibi] in court.”⁶¹ Likewise, in *Saidov v. Tajikistan*, the HR Committee found a violation of Article 14(3)(e) when a judge refused to call witnesses relevant to the defense without providing any explanation.⁶²

⁵⁸ Judicial Order Regarding the Request to Conduct a Comprehensive Psychiatric Examination of Gulzhan Pasanova (March 5, 2020).

⁵⁹ See *Fuenzalida*, para. 9.5. Other international courts, such as the European Court of Human Rights (“ECtHR”), have similarly concluded that a court cannot deprive the defense of an opportunity to obtain and introduce its own expert witness to challenge effectively an opposition’s expert’s findings and that refusing to permit an expert examination to counter material evidence may be considered a breach of the right to a fair trial. The court explained in *Khodorkonskiy and Lebedev v. Russia* that permitting the prosecution to produce and present expert reports but rejecting the defendant’s experts “created an imbalance between the defence and the prosecution in the area of collecting and adducing expert evidence,” thus breaching the equality of arms between the parties. See European Court of Human Rights, *Khodorkonskiy and Lebedev v. Russia*, App. Nos. 1082/2006 and 13772/2005, paras. 724-35. (2013).

⁶⁰ TrialWatch Fairness Report, at 13.

⁶¹ *Grant v. Jamaica*, Comm. No. 353/1988, U.N. Doc. CCPR/C/50/D/353/1988, para. 8.5. (1994).

⁶² *Saidov v. Tajikistan*, Comm. No. 2680/2015, U.N. Doc. CCPR/C/122/D/2680/2015, para. 9.6. (2018).

29. The trial court’s denial of Ms. Pasanova motion to call witnesses “relevant to [her] defence” was just as unreasoned as the decisions found to contravene Article 14(1) and (3)(e) in *Grant* and *Saidov*. Defense counsel sought testimony from Ms. Pasanova’s neighbors and relatives about Mr. Isakov’s history of domestic violence, all of which was highly relevant to Ms. Pasanova’s plea that she struck her husband in self-defense and that she acted under extreme emotional distress.⁶³ Counsel also asked the trial court to call the ambulance workers who took Mr. Isakov to the hospital and could have provided evidence regarding Ms. Pasanova’s mental state at the time of the incident.⁶⁴ Testimony on these topics was not just “relevant” to Ms. Pasanova’s defense, but central to it.

30. By preventing Ms. Pasanova from calling witnesses who could have supported her defense, the trial court violated her right to a fair trial under the ICCPR.

B. Kyrgyzstan Violated Ms. Pasanova’s Right to the Presumption of Innocence.

31. Under Article 14(2) of the ICCPR, “[e]veryone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to law.”⁶⁵ In General Comment 32, the HR Committee explained that the presumption of innocence requires that defendants “should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.”⁶⁶ Further, in *Pustovoit v. Ukraine*, the HR Committee found that Ukraine violated Article 14(2) when it “failed to demonstrate that placing [a defendant] in a metal cage during [a] public trial [. . .] was necessary for the purpose of security or the administration of justice.”⁶⁷ The United Nations Special Rapporteur on the independence of judges and

⁶³ Criminal Code of the Kyrgyz Republic, Art. 49 (December 22, 2016).

⁶⁴ Criminal Code of the Kyrgyz Republic, Art. 141 (December 22, 2016).

⁶⁵ ICCPR, Art. 14(2). *See also* Human Rights Committee, General Comment No. 32, para. 30 (“The presumption of innocence, which is fundamental to the protection of human rights ... guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt ... and requires that persons accused of a criminal act must be treated in accordance with this principle.”).

⁶⁶ *Id.*

⁶⁷ Human Rights Committee, *Mikhail Pustovoit v. Ukraine*, Comm. No. 1405/2005 U.N. Doc. CCPR/C/110/D/1405/2005, May 12, 2014, para. 9.3; *see also* *Grishkovtsov v. Belarus*, Comm. No. 2013/2010 U.N. Doc. CCPR/C/113/D/2013/2010, May 19, 2015, para. 8.4 (“[I]n the absence of any other pertinent information or argumentation from the State party as to the need to keep the [defendant] in a

lawyers has also recommended banning the use of cages in courtrooms to strengthen the presumption of innocence.⁶⁸

32. By restraining Ms. Pasanova in a cage throughout her criminal trial without any justification, the trial court violated her right to the presumption of innocence. Indeed, the way Ms. Pasanova was confined during her trial was even more egregious than the conduct at issue in *Pustovoit* — Ms. Pasanova was not only locked in a cage, but was also repeatedly verbally abused by the deceased’s relatives, who were present in the courtroom. These actions contributed to an atmosphere in which Ms. Pasanova’s guilt was treated as a foregone conclusion.

C. Kyrgyzstan Failed to Guarantee Ms. Pasanova Equality Before the Law.

33. Under the ICCPR and CEDAW, Kyrgyzstan must treat men and women equally before courts and tribunals.⁶⁹ According to the Committee on the Elimination of Discrimination Against Women (the “Committee”)—the body of experts charged with monitoring state implementation of CEDAW—states cannot fulfill this obligation without, among other things, eliminating reliance on gender stereotypes and bias in legal proceedings.⁷⁰

metal cage during his trial in court,” the State violated the defendant’s right to be presumed innocent under Article 14(2)); Communication No. 2120/2011, *Kovalev v. Belarus*, Views adopted on 29 Oct. 2012, para. 11.4 (same). The European Court of Human Rights has held similarly, going so far as to say that placing criminal defendants in cages is “incompatible with the standards of civilized behavior that are the hallmark of a democratic society.” ECtHR, *Svinarenko and Slyadnev v. Russia* (Appl. nos. 32541/08 and 43441/08, 17 July 2014); *see also* ECtHR, *Ramishvili and Kokhraidze v. Georgia*, no. 1704/06, 27/1/2009, para. 132 (“The Court further agrees with the applicants that such humiliating and unjustifiably stringent measures of restraint during the public hearing, the latter being broadcast throughout the country, tainted the presumption of innocence, the respect for which principle is of paramount importance at every stage of criminal proceedings, including proceedings bearing on the lawfulness of detention pending trial.” (citations omitted)).

⁶⁸ *See* Special Rapporteur on the independence of judges and lawyers, Russian Federation, UN Doc. A/HRC/11/41/Add.2 (2009) para. 37(2), para. 98.

⁶⁹ ICCPR, Art. 14.1; *see also* ICCPR, Art. 3; CEDAW, Art. 15.

⁷⁰ CEDAW Committee, General recommendation 33, paras. 26, 28; *see also* *V.K. v. Bulgaria*, Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol in respect of communication No. 20/2008 adopted on 25 July 2011, para. 9.12 (the failure to grant a protection order lacked gender sensitivity as required because it “reflect[ed] a stereotyped and overly narrow concept of what constitutes domestic violence”); *O.G. v. Russia*, Views adopted by the

34. With regard to Kyrgyzstan, in particular, the Committee has expressed concern about the persistence of deep-rooted patriarchal attitudes and gender-based stereotypes, which are reflected in women's unequal status in marriage and family relations, and has called on Kyrgyzstan to adopt sustained measures to end them.⁷¹ Both the Committee and the UN Special Rapporteur on Violence Against Women have also expressed alarm at the high prevalence of domestic and sexual violence within the country.⁷²

35. Ms. Pasanova's trial was tainted by the very patriarchal attitudes and harmful gender stereotypes that various UN mechanisms previously observed. As a result, Kyrgyzstan discriminated against Ms. Pasanova and failed to ensure that she received equal treatment under the law.

36. First and foremost, the trial court permitted the prosecutor to argue that any abuse that Ms. Pasanova experienced was justified by her alleged infidelity and that Ms. Pasanova would not have remained married to Mr. Isakov if he actually beat her.⁷³ The prosecutor also interrupted Ms. Pasanova's testimony with insults and sought to portray her as a bad and ungrateful wife.⁷⁴

37. Additionally, by refusing to explore whether Ms. Pasanova's sustained exposure to domestic violence—which disproportionately injures women⁷⁵—may have affected her conduct, the trial court refused to consider seriously her pleas of self-defense and extreme emotional distress. Indeed, despite testimony from Ms. Pasanova's stepchildren of their father's violent behavior,⁷⁶ the trial court rejected defense counsel's motions to call

Committee under article 7 (4) of the Optional Protocol, concerning communication No. 91/2015 adopted on 20 November 2017, para. 7.8.

⁷¹ CEDAW Committee, Concluding observations on the fourth periodic report of Kyrgyzstan, 11 March 2015, para. 15.

⁷² *Id.* para. 17. The Committee urged Kyrgyzstan to provide mandatory training for judges, prosecutors, the police, and other law enforcement officials on the strict application of criminal law provisions dealing with violence against women and on gender-sensitive procedures to deal with women who are victims of violence. *Id.*, para. 18. See also Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Mission to Kyrgyzstan (28 May 2010) A/HRC/14/22/Add.2, para. 22.

⁷³ See TrialWatch Fairness Report, at 27-28.

⁷⁴ See *id.*, at 24-28.

⁷⁵ See CEDAW Committee, General Recommendation 35.

⁷⁶ Pasanova Guilty Verdict, at 2. See also TrialWatch Fairness Report, at 17-18.

witnesses who could have corroborated Ms. Pasanova's testimony about the domestic violence she endured.⁷⁷ The judge also rejected defense counsel's motion for a comprehensive psychiatric evaluation to assess the effects of domestic violence on Ms. Pasanova's state of mind and behavior at the time of the incident.⁷⁸ The court treated Ms. Pasanova's experience as a survivor of domestic violence as entirely irrelevant.⁷⁹

38. In short, the trial court and the prosecution discriminated against Ms. Pasanova in violation of Kyrgyzstan's obligations under the ICCPR and CEDAW by relying on gender stereotypes and ignoring the extent to which her experience as a domestic-violence survivor may have supported her claims of self-defense and extreme emotional distress.

IV. CONCLUSION

39. For all these reasons, CFJ urges the Osh Regional Court to remedy the fair-trial violations to which Ms. Pasanova was subjected by overturning the trial court's verdict and re-examining Ms. Pasanova's case, taking into account all relevant facts about the domestic violence to which Ms. Pasanova was victim.

Respectfully submitted,



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⁷⁷ See *supra* Part III.A.2.

⁷⁸ See *supra* Part III.A.1.

⁷⁹ See TrialWatch Fairness Report, at 13-14, 18-19.

ATTACHMENT A



AMERICAN **BAR** ASSOCIATION

Center for Human Rights



Kyrgyzstan v. Gulzhan Pasanova

April 2020

TRIALWATCH FAIRNESS REPORT
A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

ABOUT THE AUTHOR:

Staff at the American Bar Association Center for Human Rights drafted this report. The **American Bar Association** (ABA) is the largest voluntary association of lawyers and legal professionals in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. The **ABA Center for Human Rights** has monitored trials and provided pro bono assistance to at-risk human rights defenders in over 60 countries. It is an implementing partner in the Clooney Foundation for Justice's TrialWatch initiative.

The Center would like to thank **Walter H. White, Natalia Nikonova, and Elizaveta Kurkina Oka** for their assistance with analysis and drafting. Walter H. White is a member and past chairman of the board of the Center for Human Rights as well as a former partner and managing director of Steptoe & Johnson International in Moscow. He has extensive experience in Eurasia. Mr. White previously chaired the Central Asian American Enterprise Fund and has argued cases before the Supreme Arbitrage Court of the Russian Federation. Natalia Nikonova is a practicing Russian lawyer who formerly worked for Steptoe & Johnson International in Moscow. Ms. Oka is a staff attorney at the law firm Burdelov and Partners, where she represents clients in civil and criminal proceedings, including cases of domestic violence. Both Ms. Nikonova and Ms. Oka assisted with the translation of the report.

ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

The **Clooney Foundation for Justice's TrialWatch initiative** monitors and grades the fairness of trials of vulnerable people around the world, including journalists, women and girls, religious minorities, LGBTQ persons and human rights defenders. Using this data, TrialWatch advocates for victims and is developing a Global Justice Ranking measuring national courts' compliance with international human rights standards.

The statements and analysis expressed have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and do not represent the position or policy of the American Bar Association. Furthermore, nothing in this report should be considered legal advice for specific cases. Additionally, the views expressed in this report are not necessarily those of the Clooney Foundation for Justice.



ABA Center for Human Rights staff who are members of the TrialWatch Experts Panel assigned this trial a grade of D:

Kyrgyzstan's prosecution of Gulzhan Pasanova for fatally injuring her husband entailed serious violations of international standards, including: (i) the right to call and examine witnesses; (ii) the right to be presumed innocent; (iii) the right to an impartial tribunal; (iv) the right to appeal; and (v) the right to be free from discrimination. In particular, Ms. Pasanova presented significant, credible evidence that she had been subjected to years of domestic violence at the hands of her husband. This evidence was ignored and additional relevant evidence as to her state of mind at the time of the incident was excluded. Because a review of the trial monitors' notes and the record show that these violations affected the outcome of the trial and/or resulted in significant harm to Ms. Pasanova, who was convicted and sentenced to a nine-year jail term, the trial has been assigned a "D" under the grading methodology described in the Annex.

From February to March 2020, the American Bar Association (ABA) Center for Human Rights monitored the criminal trial of Gulzhan Pasanova in the Kyrgyz Republic (Kyrgyzstan) as part of the Clooney Foundation for Justice's TrialWatch initiative. Ms. Pasanova was prosecuted for and convicted of the offense of grievous bodily harm for fatally injuring her husband. Ms. Pasanova, who had been subjected to long-term domestic abuse by her husband, claimed she acted in self-defense. The proceedings against Ms. Pasanova were marred by serious fair trial violations: in particular, violations of the right to call and examine witnesses, the right to an impartial tribunal, the right to appeal, and the right to the presumption of innocence. Further, the prosecutor and court disregarded the documented history of domestic violence, in contravention of Ms. Pasanova's right to be free from discrimination.

Ms. Gulzhan Pasanova is a 29-year old woman (as of April 2020) from Osh, the second largest city in Kyrgyzstan. At the time of the alleged offense, Ms. Pasanova was living with her husband, Mr. Umutbek Akdzhigitovich Isakov, and their children. The testimony of witnesses, corroborated by Ms. Pasanova's medical records, indicates that she was subjected to prolonged physical and psychological abuse at the hands of Mr. Isakov.

In the days leading up to his death, Mr. Isakov had accused Ms. Pasanova of having an affair and confiscated her phone. On the night of November 19, 2019, Mr. Isakov and Ms. Pasanova got into an argument over Mr. Isakov's suspicions. Ms. Pasanova alleges that Mr. Isakov threw a knife at her, threatened her, and hit her. According to Ms. Pasanova, she grabbed a reinforcing rod from an adjoining room and, out of fear for her wellbeing,

struck Mr. Isakov on the head. She subsequently sought assistance from Mr. Isakov's brother, who called an ambulance. Mr. Isakov died at the hospital. On November 20, 2019, Ms. Pasanova was arrested. That same day, an investigating judge ordered that she be detained pending trial.

The decision to impose pretrial detention appears to have been unjustified. Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) requires courts to undertake an individualized assessment of the necessity of pretrial detention, which should always be an exceptional measure. According to Ms. Pasanova's counsel, the court ordered pretrial detention solely based on the severity of the crime, without reference to Ms. Pasanova's specific circumstances. This type of categorical justification does not comport with the ICCPR.

At the trial stage, violations persisted. Defense counsel argued that Ms. Pasanova had acted in self-defense or in a state of "extreme emotional distress" stemming from long-term abuse, thereby diminishing her criminal responsibility. In support of these theories, the defense requested to call witnesses, including neighbors who were familiar with the history of abuse and ambulance workers who attended the scene and could speak to Ms. Pasanova's demeanor. The court, however, denied all such requests, deeming the proposed witnesses irrelevant to the case.

The defense also requested a psychiatric examination to evaluate Ms. Pasanova's mental state at the time of the alleged offense. The court denied this request, stating that the psychiatric examination conducted during the investigation - which focused exclusively on Ms. Pasanova's fitness to stand trial without assessing the potential effects of long-term abuse on her mental state at the time of the incident - was sufficient. By precluding the testimony of key fact witnesses as well as an expert examination central to the defense case, the court violated Ms. Pasanova's right to call and examine witnesses, protected by Article 14(3) of the ICCPR.

The aforementioned decisions disadvantaged the defense in relation to the prosecution, contravening the principle of equality of arms. The rulings, all to the detriment of the defense, likewise evinced the court's lack of impartiality - in violation of Article 14(1) of the ICCPR. The court's bias was further demonstrated by the judgment convicting Ms. Pasanova, which failed to address the defense arguments that Ms. Pasanova acted in self-defense or, at the very least, in a state of "extreme emotional distress."

Instead, in finding Ms. Pasanova guilty of grievous bodily harm, the court limited its assessment to evidence that Ms. Pasanova fatally injured her husband - an issue that was never disputed. The key factual question raised at trial was not *whether* Ms. Pasanova fatally injured her husband, but *why* she did so. In bypassing the crux of the case, the court violated Ms. Pasanova's right to appeal under Article 14(5) of the ICCPR,

the exercise of which necessitates a duly reasoned judgment. Absent sufficient rationale for a conviction, a defendant cannot effectively challenge the decision before a higher tribunal.

Notably, Ms. Pasanova was confined in a metal cage for the duration of courtroom proceedings. This presentation to the court, indicating that Ms. Pasanova was a dangerous criminal, violated the presumption of innocence protected by Article 14(2) of the ICCPR. The injustice therein was exacerbated by the fact that, trapped in the cage, Ms. Pasanova was forced to endure a continuous barrage of insults and curses directed at her by Mr. Isakov's relatives.

In addition to the fair trial violations set forth above, the prosecution's behavior raised serious concerns. Over the course of the trial, the prosecutor repeatedly used inappropriate language, spoke out of turn, and screamed at the defense attorneys and Ms. Pasanova, breaching ethical standards that require prosecutors to act with integrity and professionalism.

Further, the conduct of both the prosecutor and the court violated Ms. Pasanova's right to freedom from discrimination, as established by the ICCPR and the Convention on the Elimination of All Forms of Discrimination Against Women. The prosecution, for example, relied on archaic gender stereotypes to make its case, suggesting, among other things, that Ms. Pasanova was lying about domestic violence, that she would not have stayed with Mr. Isakov if she had truly been abused, and that any abuse that did occur was Ms. Pasanova's fault. The court failed to intervene and, correspondingly, treated the issue of long-term abuse as irrelevant to the case, omitting any mention of domestic violence in determining Ms. Pasanova's guilt and the appropriate sentence.

The devaluing of domestic violence survivors' experiences is a widespread problem in Kyrgyzstan, as evidenced by the lack of institutional support for survivors, the rarity of investigation and prosecution of domestic violence complaints, the shaming of survivors who speak out, and the many obstacles that survivors face in the judicial system. That Ms. Pasanova's experiences were discounted at every stage of the criminal proceedings against her thus reflects a larger pattern of victim-blaming and marginalization.



A. POLITICAL AND LEGAL CONTEXT

The arrest, detention and prosecution of Ms. Gulzhan Pasanova is consistent with a broader pattern of gender discrimination, victim blaming, and due process violations in Kyrgyzstan.

Gender Discrimination and Violence

Gender inequality is a significant issue in Kyrgyzstan.¹ As documented by the United Nations Development Program (UNDP), “[p]atriarchal attitudes” are pervasive.² These “[t]raditional and cultural norms make it more difficult for women to gain access to public services, markets and institutions, social protection, and decent employment opportunities.”³ 56% of women are employed compared with 80% of men, with “[w]omen engaged in unpaid productive work and women outside the labor force account[ing] for 72% of the total working age population living below [the] poverty line.”⁴

While Kyrgyz law “provides for the same legal status and rights for” both genders,⁵ women who *are* employed are paid substantially less than men.⁶ In the political realm, although “women constitute more than 40 percent of public servants,” the majority work at the middle or lower levels.⁷ Kyrgyz women’s voices are thus “largely excluded from decision-making.”⁸

Gender inequality, stemming from deeply held patriarchal norms, has led to widespread violence against women.⁹ According to UNDP, up to 83% of Kyrgyz women “suffer from

¹ United Nations Development Program, “UNDP Kyrgyzstan Gender Equality Strategy”, 2018, pg. 7 [hereinafter “UNDP 2018”]. Available at <https://www.undp.org/content/dam/kyrgyzstan/Publications/gender/UNDP%20in%20Kyrgyzstan%20Gender%20Equality%20Strategy%202018.pdf>.

² Id.

³ United Nations Women, “Economic empowerment.” Available at <https://eca.unwomen.org/en/where-we-are/kyrgyzstan/economic-empowerment>.

⁴ UNDP 2018 at pg. 7.

⁵ U.S. Department of State, “2019 Country Reports on Human Rights Practices: Kyrgyz Republic”, March 11, 2020, pg. 20 [hereinafter “Dep’t of State 2019 Report”]. Available at <https://www.state.gov/wp-content/uploads/2020/02/KYRGYZ-REPUBLIC-2019-HUMAN-RIGHTS-REPORT.pdf>.

⁶ Id at pg. 28.

⁷ United Nations Development Program, “Gender equality in the Kyrgyz Republic.” Available at <https://www.kg.undp.org/content/kyrgyzstan/en/home/ourwork/democraticgovernance/gender-equality.html>. See also Freedom House, “Freedom in the World 2019 – Kyrgyzstan Country Report”, 2020 [hereinafter “Freedom House 2019”]. Available at <https://freedomhouse.org/country/kyrgyzstan/freedom-world/2019>.

⁸ United Nations Women, “UN Women in Kyrgyzstan.” Available at <https://eca.unwomen.org/en/where-we-are/kyrgyzstan>; Dep’t of State 2019 Report at pgs. 16-17; Freedom House 2019.

⁹ See Saltanat Childress, “‘Plates and Dishes Smash; Married Couples Clash’: Cultural and Social Barriers to Help-Seeking Among Women Domestic Violence Survivors in Kyrgyzstan”, SAGE: Violence Against

various forms of violence,” including sexual violence, forced marriages, and domestic violence.¹⁰ As noted by the U.S. State Department in its most recent human rights report on Kyrgyzstan, “violence against women and girls remain[s] a significant ... problem.”¹¹

Underreporting of Domestic Violence: Societal and Institutional Failures

Domestic violence is “commonplace” in Kyrgyzstan,¹² with husbands the abusers in the vast majority of cases.¹³ However, such incidents are severely under-reported.¹⁴ A survey conducted by Kyrgyzstan’s Health Ministry found that “only 5 percent of women and girls who sought help for any type of physical or sexual violence reported going to police.”¹⁵ This reluctance to notify the authorities of abuse stems from a range of societal and systemic failures.

First, speaking out about domestic violence means risking stigmatization. An Amnesty International report, for example, concluded that domestic violence survivors avoided contacting the police due to, among other things, “social stigma [and] discriminatory attitudes.”¹⁶ Abuse is typically viewed as the woman’s fault, particularly if the victim is married and/or has a family.¹⁷ According to Human Rights Watch, “[w]omen who complain

Women, 2017, pg. 3. Available at

<http://pdfs.semanticscholar.org/d679/f57efe46b33dab2d154f6b896bd558b51944.pdf>.

¹⁰ United Nations Development Program, “Gender equality in the Kyrgyz Republic.”

¹¹ Dep’t of State 2019 Report at pg. 19.

¹² Pacific Standard Magazine, “Domestic Violence and Murder in Kyrgyzstan”, November 8, 2017.

Available at <https://psmag.com/social-justice/domestiv-violence-leads-to-murder-in-kyrgyzstan>. See also Human Rights Watch, “Grim news from Kyrgyzstan on domestic violence”, March 5, 2020 [hereinafter “HRW 2020”]. Available at <https://www.hrw.org/news/2020/03/05/grim-news-kyrgyzstan-domestic-violence>; Human Rights Watch, “Reconciled to Violence: State Failure to Stop Domestic Abuse and Abduction of Women in Kyrgyzstan”, September 26, 2006. Available at <https://www.hrw.org/report/2006/09/26/reconciled-violence/state-failure-stop-domestic-abuse-and-abduction-women>; Open Democracy, “Why domestic violence is flourishing in Kyrgyzstan - and how it could stop”, February 21, 2020. Available at <https://www.opendemocracy.net/en/odr/why-domestic-violence-flourishing-kyrgyzstan-and-how-it-could-stop/>.

¹³ Open Democracy, “Why domestic violence is flourishing in Kyrgyzstan - and how it could stop”, February 21, 2020.

¹⁴ HRW 2020; Dep’t of State 2019 Report at pg. 19; Open Democracy, “Why domestic violence is flourishing in Kyrgyzstan - and how it could stop”, February 21, 2020. See also Pacific Standard Magazine, “Domestic Violence and Murder in Kyrgyzstan”, November 8, 2017 (“A survey by the Health Ministry shows that a quarter of the women in the country experience domestic violence over their lifetimes, but the overwhelming majority never speak out”).

¹⁵ Human Rights Watch, “Call Me When He Tries to Kill You’: State Response to Domestic Violence in Kyrgyzstan”, 2015, pg. 48 [hereinafter “HRW 2015”]. Available at <https://www.hrw.org/report/2015/10/28/call-me-when-he-tries-kill-you/state-response-domestic-violence-kyrgyzstan> (As stated by a judge in Osh, the same city in which Ms. Pasanova was prosecuted, “only one out of 1,000 women call the police”).

¹⁶ Amnesty International, “Amnesty International Report 2016/17 - Kyrgyzstan”, February 22, 2017, pg. 227. Available at <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>. See also Dep’t of State 2019 Report at pg. 19.

¹⁷ HRW 2015 at pgs. 23, 26. See also Saltanat Childress, “Plates and Dishes Smash; Married Couples Clash’: Cultural and Social Barriers to Help-Seeking Among Women Domestic Violence Survivors in Kyrgyzstan”, SAGE: Violence Against Women, 2017, pgs. 3, 8, 11.

about violence in the home or leave abusive partners are perceived as destroying the family, leaving their children as ‘orphans’ subject to immoral upbringing, and bringing disgrace onto themselves and their extended family.”¹⁸ It is not uncommon for a woman’s own family to refuse to take her in after she leaves her husband,¹⁹ reflecting the reality that there is “widespread acceptance of intimate partner violence.”²⁰

Second, victims are often economically dependent on their abusers.²¹ As discussed above, women in Kyrgyzstan have significantly fewer job and educational opportunities than men, narrowing their exit options and making “it difficult for [them] to leave abusive relationships and live independently.”²² This problem is exacerbated by the dearth of shelters, crisis centers, and other social services.²³

Third, as stated by UNDP, the “justice system and law enforcement bodies do not respond adequately to women’s rights.”²⁴ Kyrgyzstan passed a new misdemeanor law criminalizing domestic violence in 2019 (domestic violence had previously been prosecuted as an administrative offense) and a new Family Violence Law in 2017. However, “gaps in these laws and their implementation leave women at risk.”²⁵ While the 2017 Family Violence Law led to an increase in protection orders, such “orders are rarely enforced and violations are rarely punished,” leaving victims vulnerable to retaliation.²⁶ Correspondingly, the new misdemeanor legislation eliminated the possibility of administrative arrest, which many domestic violence victims had relied on for protection, and replaced it with fines and community service.²⁷ Again, victims who contact the police are exposed to reprisals, further undermining the effectiveness of the reforms.

The infrequency of investigations and prosecutions initiated as the result of complaints is likewise discouraging. Although a reported 6,145 domestic violence cases were

¹⁸ HRW 2015 at pg. 23.

¹⁹ Saltanat Childress, “‘Plates and Dishes Smash; Married Couples Clash’: Cultural and Social Barriers to Help-Seeking Among Women Domestic Violence Survivors in Kyrgyzstan”, SAGE: Violence Against Women, 2017, pg. 8.

²⁰ Saltanat Childress & Darald Hanusa, “‘All the system is simply a soap bubble’: Legal help-seeking for domestic violence among women in Kyrgyzstan”, *Journal of Family Violence*, pg. 148.

²¹ HRW 2015 at pgs. 27-28; Saltanat Childress, “‘Plates and Dishes Smash; Married Couples Clash’: Cultural and Social Barriers to Help-Seeking Among Women Domestic Violence Survivors in Kyrgyzstan”, SAGE: Violence Against Women, 2017, pg. 3.

²² Amnesty International, “Amnesty International Report 2016/17 - Kyrgyzstan”, February 22, 2017, pg. 227.

²³ HRW 2020; Human Rights Watch, “Kyrgyzstan: Pressure Builds to Protect Women and Girls”, May 28, 2019 [hereinafter “HRW 2019”]. Available at <https://www.hrw.org/news/2019/05/28/kyrgyzstan-pressure-builds-protect-women-and-girls>.

²⁴ United Nations Development Program, “Gender equality in the Kyrgyz Republic.” See also Human Rights Watch, “World Report 2020: Kyrgyzstan Events of 2019”. Available at <https://www.hrw.org/world-report/2020/country-chapters/kyrgyzstan>.

²⁵ HRW 2020.

²⁶ Id (“Police issued nearly 5,400 protection orders in 2019, but government data shows only 18 registered misdemeanors for failure to comply”); HRW 2019.

²⁷ Id.

registered with the police in 2019, “only 649 resulted in criminal cases.”²⁸ Between 2011 and 2018, just 1,712 out of 32,357 reported domestic violence cases were investigated.²⁹ Police, the majority of whom have yet to receive specialized training on domestic violence,³⁰ often characterize abuse as a family matter outside the purview of law enforcement.³¹ Consequently, as documented by Human Rights Watch, officers discourage victims from pursuing criminal complaints.³² Criminal legislation permits the authorities to close cases in the event of reconciliation between the perpetrator and victim, an outcome for which police officers advocate.³³ One survivor who reached out to the police recounted her experience: “They said ‘Did he use a knife? Did he try to kill you?’ I would say, ‘No,’ and they would say, ‘Okay, you call me when he tries to kill you, because we have more important things to do.’”³⁴

Notably, local organizations have been active in raising awareness about the issue of domestic violence and pushing for reform. On March 8, International Women’s Day, a coalition of Kyrgyz activists organized a peaceful march to call attention to gender-based violence.³⁵ A mob of masked men attacked the marchers, injuring many.³⁶ Instead of intervening, the authorities arrested and detained approximately 70 protesters.³⁷ Those who advocate for domestic violence survivors face - if not the violence displayed on March 8 - an uphill battle.³⁸

Prosecutions of Domestic Violence Victims

With respect to women prosecuted for taking violent action against their abusers, Kyrgyzstan stands out. As documented by a study conducted by Penal Reform International in 2014, 20% of all female prisoners in Kyrgyzstan had been convicted of causing the death of a male family member - a high number in comparison with other

²⁸ HRW 2020.

²⁹ Open Democracy, “Why domestic violence is flourishing in Kyrgyzstan - and how it could stop”, February 21, 2020.

³⁰ See id.

³¹ American University of Central Asia, Report to the UN Special Rapporteur on Violence Against Women, March 8, 2018, pgs. 5, 12. Available at https://www.ohchr.org/Documents/Issues/Women/SR/Shelters/Meghan%20McCormack_Aiymbubu_Djaparukulova_Shelters.pdf.

³² HRW 2015 at pgs. 47-49.

³³ HRW 2019.

³⁴ HRW 2015 at pg. 48.

³⁵ Human Rights Watch, “Kyrgyzstan: Women’s Activists Detained”, March 11, 2020. Available at <https://www.hrw.org/news/2020/03/11/kyrgyzstan-womens-activists-detained>.

³⁶ Id.

³⁷ Id.

³⁸ HRW 2019; HRW 2020. See Open Democracy, “Your Traditions, Our Blood!: The Struggle Against Patriarchal Violence in Kyrgyzstan”, April 2, 2020. Available at <https://www.opendemocracy.net/en/odr/your-traditions-our-blood-the-struggle-against-patriarchal-violence-in-kyrgyzstan/>.

countries.³⁹ A United Nations Population Fund report further found that 70% of Kyrgyz women convicted of killing their husbands or other family members had experienced a “longstanding pattern of physical abuse or forced economic dependence.”⁴⁰ The Kyrgyz government has referenced an even higher figure in this regard, stating that 89 percent of female prisoners convicted of murder or attempted murder have been subjected to domestic violence.⁴¹

In addition to the sheer prevalence of domestic violence, these numbers reflect the high conviction rate and heavy prison sentences imposed in cases in which domestic violence victims have killed their abusers.⁴² Although Kyrgyz legislation permits courts to acquit or impose lesser punishments on victims of domestic violence, such outcomes are rare.

Article 49(1) of the Kyrgyz Criminal Code exempts individuals who act in self-defense from criminal liability where there is an “immediate threat of violence” that endangers their lives or health. Article 49(6) of the Code further states that regardless of the severity of the damage caused, defense against an armed attack never “exceeds the limits of necessary defense.”

Meanwhile, Kyrgyz legislation penalizes as separate offenses acts perpetrated in “excessive self-defense” or as the result of “extreme emotional distress,”⁴³ both of which carry lighter penalties than classic homicide or grievous bodily harm and both of which could apply to cases where victims harm their abusers. With respect to mitigating factors, the list enumerated in the criminal code is non-exhaustive, affording courts discretion to consider domestic violence in determining the sentences of victims convicted of killing their partners.

This legislation notwithstanding, prosecutors tend to charge offenses carrying the highest penalty in such cases and courts tend to reject defense arguments to acquit the accused or reduce the punishment.⁴⁴ As noted in a report by a coalition of local organizations, “criminal proceedings against women are generally in connection with the murders of spouses/cohabitants, from whom these women have suffered violence over a long period of time. However, in practice, this provision is not taken into account by judges as a

³⁹ Penal Reform International, “Women in criminal justice systems and the added value of the UN Bangkok Rules”, 2015, pg. 7. Available at https://cdn.penalreform.org/wp-content/uploads/2015/04/Added-value-of-the-Bangkok-Rules-briefing-paper_final.pdf. See also Pacific Standard Magazine, “Domestic Violence and Murder in Kyrgyzstan”, November 8, 2017.

⁴⁰ United Nations General Assembly, Special Rapporteur on Violence Against Women, Its Causes and Consequences, U.N. Doc. A/HRC/14/22/Add.2, May 28, 2010, para. 26.

⁴¹ Pacific Standard, “Domestic Violence and Murder in Kyrgyzstan”, November 8, 2017.

⁴² See Institute for War and Peace Reporting, “Kyrgyzstan: Failing Victims of Domestic Violence”, September 18, 2019. Available at <https://iwpr.net/global-voices/kyrgyzstan-failing-victims-domestic-violence>.

⁴³ Kyrgyz Criminal Code, Articles 131, 132, 140, 141.

⁴⁴ Institute for War and Peace Reporting, “Kyrgyzstan: Failing Victims of Domestic Violence”, September 18, 2019.

circumstance of self-defense or emergency, excluding criminality. On the contrary, women are subjected to harsher sentences in comparison with men.”⁴⁵

According to Human Rights Watch, the victim-blaming that pervades society extends to the courtroom, which may explain judicial resistance to applying Kyrgyz laws on self-defense, lesser offenses, and mitigating factors. Human Rights Watch has, for example, identified a number of instances in which judges and prosecutors have relied on archaic gender stereotypes in proceedings relating to domestic violence.⁴⁶

More broadly, fair trial violations are a significant problem in criminal trials in Kyrgyzstan. The U.S. State Department’s 2019 human rights report on Kyrgyzstan, for instance, recounted abuses such as “intimidation of trial judges by victims’ relatives and friends”; the use of bribes; coerced confessions; denial of access to counsel; the caging of defendants during trials; and convictions unsupported by the evidence.⁴⁷ Freedom House has likewise expressed concern about judicial independence and the violation of fair trial rights - particularly the presumption of innocence.⁴⁸

As will be discussed below, Ms. Pasanova’s case reflects the aforementioned pattern: although there was evidence that Ms. Pasanova was subjected to prolonged domestic violence and struck Mr. Isakov in self-defense, the prosecution brought charges carrying the highest possible penalty; there were numerous violations of Ms. Pasanova’s right to a fair trial, including the right to the presumption of innocence, the right to call and examine witnesses, and the right to judicial impartiality; and the prosecution and judge relied on gender stereotypes throughout the proceedings, refusing to acknowledge Ms. Pasanova’s experience as a survivor of domestic violence and thereby discriminating against her.

B. CASE HISTORY

Ms. Gulzhan Pasanova (“Ms. Pasanova”) is a 29-year old woman (as of April 2020) from Osh, the second largest city in the Kyrgyz Republic. At the time of the alleged offense, Ms. Pasanova was living with her husband, Mr. Umutbek Akdzhigitovich Isakov, and their four children (the two oldest are Ms Pasanova’s stepchildren).

Evidence presented at trial demonstrated that Ms. Pasanova had been subjected to long-term abuse. A forensic examination conducted as part of the investigation, for example,

⁴⁵ United Nations Development Program, “What is the Cost of Domestic Violence?”, 2012, pg. 8. Available at <https://www.undp.org/content/dam/kyrgyzstan/Publications/gender/UNDP-kgz-How-much-violence-in-a-family-costs-ENG.pdf>.

⁴⁶ HRW 2015 at pgs. 26-27.

⁴⁷ Dep’t of State 2019 Report at pgs. 6-8.

⁴⁸ Freedom House 2019.

found bruises and a scar on Ms. Pasanova's body from previous incidents.⁴⁹ Correspondingly, the findings of psychiatric experts appointed by the state noted: "in 2017, the examinee [Ms. Pasanova] suffered an injury with loss of consciousness and vomit due to beatings inflicted by her husband. She underwent in-patient treatment at a private health care facility. Afterwards, she had repeated micro traumas. The examinee feels bad in crowded and noisy places."⁵⁰

One of the primary prosecution witnesses, Ms. Pasanova's brother, testified that Mr. Isakov had recounted an incident in which he "hit Ms. Pasanova."⁵¹ In Ms. Pasanova's words: "My husband and I often had fights, he liked to drink, and he frequently battered me, so that I was embarrassed to leave home with scratches and bruises and at times did not go out for months. I was hospitalized once and had a concussion ... My husband was very jealous."⁵² In contrast, Mr. Isakov's siblings, who participated in the trial as injured parties,⁵³ claimed to have never heard of fights or physical abuse.⁵⁴

With respect to the lead-up to the alleged offense, Ms. Pasanova's stepson and stepdaughter corroborated Ms. Pasanova's account of events.⁵⁵ They testified that in the days preceding the incident, Mr. Isakov was angry with Ms. Pasanova because he suspected her of having an affair.⁵⁶ According to the stepdaughter, Mr. Isakov had confiscated Ms. Pasanova's phone.⁵⁷

On the night of November 19, 2019, Ms. Pasanova was home with her children. Mr. Isakov was late to dinner. He told Ms. Pasanova that his car had broken down.⁵⁸ Mr. Isakov did not arrive at the family apartment until 10 or 11 pm, at which point the children were still awake.⁵⁹ To Ms. Pasanova, he appeared intoxicated.⁶⁰

The account that follows is based on Ms. Pasanova's statements. There were no other direct witnesses, as the children had gone to sleep. Mr. Isakov accused Ms. Pasanova of

⁴⁹ Osh Regional Forensic Bureau, Forensic Examination of Gulzhan Pasanova, November 20, 2019 (unofficial translation).

⁵⁰ The Center for Mental Health of Osh Region, Forensic Mental Health Assessment of Gulzhan Pasanova, November 26, 2019 (unofficial translation).

⁵¹ Monitor's Notes, February 24, 2020.

⁵² Monitor's Notes, February 11, 2020.

⁵³ Under Article 41 of the Kyrgyz Criminal Code, injured parties have the right, among other things, to be represented by counsel, participate in trials, and speak during hearings.

⁵⁴ Monitor's Notes, March 4, 2020; Monitor's Notes, March 5, 2020.

⁵⁵ Monitor's Notes, February 11, 2020 (Ms. Pasanova testified that Mr. Isakov was angry with her because of his suspicions of the affair and had taken away her phone).

⁵⁶ Monitor's Notes, February 11, 2020.

⁵⁷ Id.

⁵⁸ Osh City Prosecutor's Office, Pasanova Indictment, December 23, 2019 (pretrial statements of Ms. Pasanova's stepdaughter and stepson) (unofficial translation).

⁵⁹ Id.; Monitor's Notes, February 11, 2020.

⁶⁰ Id. To note, the autopsy of the accused found no alcohol in his blood.

infidelity⁶¹ and “began to hurl insults at [her] and threatened [her] at knifepoint.”⁶² Mr. Isakov subsequently threw a knife at Ms. Pasanova, which glanced off a wall and fell to the ground.⁶³ He stated: “And now I will lay my hands upon you. Just wait and you’ll see ... I have to destroy you.”⁶⁴ Mr. Isakov then hit Ms. Pasanova on the head.⁶⁵ Ms. Pasanova ran to the balcony adjoining the room and came across a reinforcing rod.⁶⁶ “[S]cared” and “afraid [he] would beat her again,”⁶⁷ she struck Mr. Isakov several times with the reinforcing rod, and he fell down.⁶⁸

In shock, Ms. Pasanova saw Mr. Isakov bleeding on the ground.⁶⁹ She rushed out of her apartment building to seek assistance but could not find anyone.⁷⁰ Mr. Isakov’s brother, Mukanbet, lived on the second floor of her apartment building.⁷¹ While outside, Ms. Pasanova saw a light on in Mukanbet’s apartment and returned to the building to ask him for help.⁷²

The following account is corroborated by multiple sources. Ms. Pasanova told Mukanbet that his brother had been injured in a street fight.⁷³ They went to Ms. Pasanova’s apartment, where Mukanbet called an ambulance.⁷⁴ Mr. Isakov was taken to the Osh City Hospital, accompanied by Ms. Pasanova and Mukanbet.⁷⁵ Mr. Isakov later died in the hospital.⁷⁶

On November 20, at Mr. Isakov’s funeral, the police arrested Ms. Pasanova. That same day, an investigating judge ordered that she be detained pending trial.⁷⁷ On December 23, 2019, the prosecution formally indicted Ms. Pasanova with grievous bodily harm

⁶¹ Osh City Prosecutor’s Office, Pasanova Indictment, December 23, 2019.

⁶² Id.

⁶³ Monitor’s Notes, February 11, 2020; Osh City Prosecutor’s Office, Pasanova Indictment, December 23, 2019; Osh City Court, Pasanova Judgment, March 5, 2020 (unofficial translation).

⁶⁴ Osh City Prosecutor’s Office, Pasanova Indictment, December 23, 2019.

⁶⁵ Id.

⁶⁶ Monitor’s Notes, February 11, 2020; Osh City Prosecutor’s Office, Pasanova Indictment, December 23, 2019; Osh City Court, Pasanova Judgment, March 5, 2020.

⁶⁷ Monitor’s Notes, February 11, 2020.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Monitor’s Notes, February 11, 2020; Osh City Prosecutor’s Office, Pasanova Indictment, December 23, 2019; Osh City Court, Pasanova Judgment, March 5, 2020.

⁷¹ Osh City Prosecutor’s Office, Pasanova Indictment, December 23, 2019.

⁷² Id.

⁷³ Osh City Prosecutor’s Office, Pasanova Indictment, December 23, 2019; Osh City Court, Pasanova Judgment, March 5, 2020.

⁷⁴ Monitor’s Notes, February 11, 2019; Osh City Prosecutor’s Office, Pasanova Indictment, December 23, 2019; Osh City Court, Pasanova Judgment, March 5, 2020.

⁷⁵ Monitor’s Notes, February 11, 2020; Osh City Prosecutor’s Office, Pasanova Indictment, December 23, 2019. There are discrepancies between Ms. Pasanova’s statements regarding whether she and Mukanbet drove Mr. Isakov to the hospital or whether the ambulance did.

⁷⁶ Monitor’s Notes, February 11, 2020; Osh City Prosecutor’s Office, Pasanova Indictment, December 23, 2019; Osh City Court, Pasanova Judgment, March 5, 2020.

⁷⁷ Interview with Defense Counsel, April 6, 2020; Osh City Court, Pasanova Judgment, March 5, 2020.

resulting in death under Article 138(3)(1) of the Kyrgyz criminal code.⁷⁸ (Ms. Pasanova was charged with grievous bodily harm as opposed to homicide because Mr. Isakov did not die immediately but hours later - at the hospital). During Ms. Pasanova's detention, state psychiatric experts examined her.⁷⁹ Though the assessment was purportedly aimed at assessing both Ms. Pasanova's state of mind at the time of the alleged offense *and* her competence to stand trial, it focused on the latter (as will be detailed below).

The trial began before the Osh City Court on February 11, 2020. Ms. Pasanova was confined in a metal cage for the duration of the courtroom proceedings. While in the cage, she was subjected to verbal attacks by Mr. Isakov's relatives, who yelled and cursed at her about her alleged affair and responsibility for Mr. Isakov's death.⁸⁰

The prosecution argued that Mr. Isakov had not abused Ms. Pasanova and that her actions warranted the highest possible penalty under Article 138(3)(1): 10 years imprisonment.⁸¹ The defense argued both that Ms. Pasanova had acted in self-defense under Article 49 and that her actions should be requalified under Article 141 of the criminal code, which proscribes grievous bodily harm committed due to "extreme emotional distress" and carries a much lighter sentence: a maximum of two years and six months.⁸² Kyrgyz courts are permitted to requalify more serious offenses to lesser offenses at the verdict stage.⁸³

At hearings held on February 11, February 24, and March 4, witnesses, the accused, and the injured parties (Mr. Isakov's siblings) testified. At the hearing on February 11, the defense requested to call several witnesses, including Ms. Pasanova's neighbors and ambulance workers who attended to Mr. Isakov.⁸⁴ Given that the neighbors were familiar with Mr. Isakov's abuse of Ms. Pasanova and the ambulance workers had interacted with Ms. Pasanova on the night of the alleged offense, their proposed testimony was probative of whether Ms. Pasanova had acted due to "extreme emotional distress." The court rejected the defense request on the grounds that the proposed testimony was irrelevant.⁸⁵

On March 4, the defense requested an additional psychiatric examination, stating that the initial examination had focused exclusively on Ms. Pasanova's competence to stand trial, not her mental state at the time of the incident: the key to the defense's "extreme

⁷⁸ Osh City Prosecutor's Office, Pasanova Indictment, December 23, 2019.

⁷⁹ The Center for Mental Health of Osh Region, Forensic Mental Health Assessment of Gulzhan Pasanova, November 26, 2019.

⁸⁰ Monitor's Notes, February 11, 2020; Monitor's Notes, March 4, 2020; Monitor's Notes, March 5, 2020.

⁸¹ Monitor's Notes, March 5, 2020.

⁸² *Id.* To note, defense counsel presented different arguments during closing arguments. One lawyer argued that Ms. Pasanova should be acquitted under Article 49 and the other argued that the offense should be requalified under Article 141.

⁸³ Kyrgyz Code of Criminal Procedure, Article 290(2).

⁸⁴ Interview with Defense Counsel, April 6, 2020.

⁸⁵ *Id.*

emotional distress” theory.⁸⁶ The judge rejected the defense request, deeming the initial investigation sufficient.⁸⁷

On March 5, the parties gave their closing arguments. That same day, the court issued its judgment, convicting Ms. Pasanova under Article 138(3)(1).⁸⁸ She was sentenced to nine years in prison and a fine of 90,000 som: the equivalent of approximately 1,100 U.S. dollars.

⁸⁶ Monitor’s Notes, March 4, 2020.

⁸⁷ Osh City Court, Ruling Against an Additional Psychiatric Examination, March 5, 2020.

⁸⁸ Osh City Court, Pasanova Judgment, March 5, 2020.

METHODOLOGY



A. THE MONITORING PHASE

As part of the Clooney Foundation for Justice’s TrialWatch initiative, the ABA Center for Human Rights deployed a monitor to the trial of Gulzhan Pasanova before the Osh City Court in Osh, Kyrgyzstan. The trial was in Kyrgyz and the monitor was able to follow the proceedings. Prior to the trial, the Center conducted background research and consulted with country experts.

The monitor did not experience any impediments in entering the courtroom and was present for the entirety of the trial.

B. THE ASSESSMENT PHASE

To evaluate the trial’s fairness and arrive at a grade, ABA Center staff who are members of the TrialWatch Experts Panel reviewed court documents and notes taken during the proceedings. Center staff found that the trial failed to conform to numerous binding international law standards. As relayed by defense counsel, Ms. Pasanova was unjustifiably detained pretrial. Once the proceedings started, the court consistently issued unsupported rulings to the detriment of the defense, violating, among other things, the right to call and examine witnesses and the right to judicial impartiality. Further, the conduct of both the court and prosecutor breached Ms. Pasanova’s right to be free from discrimination.

ANALYSIS



A. APPLICABLE LAW

This report draws upon the following sources: the International Covenant on Civil and Political Rights (the “ICCPR”); jurisprudence from the United Nations Human Rights Committee, the body tasked with monitoring implementation of the ICCPR; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); jurisprudence from the United Nations Committee to Eliminate Discrimination Against Women, the body tasked with monitoring implementation of the CEDAW; commentary from United Nations Special Procedures; and best practices in the field of prosecutorial ethics. Kyrgyzstan acceded to the ICCPR in 1994 and to the CEDAW in 1997.

B. INVESTIGATION AND PRETRIAL STAGE VIOLATIONS

Pretrial Detention

Article 9(1) of the ICCPR stipulates that “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.”

The United Nations Human Rights Committee has noted that with respect to detention, the concept of “arbitrariness” must be “interpreted broadly, to include elements of inappropriateness, injustice, lack of predictability and due process of law as well as elements of reasonableness, necessity and proportionality.”⁸⁹ Not only should pretrial detention be the exception and as short as possible, but detention must be “lawful” (in accordance with domestic law) and “reasonable and necessary in all circumstances.”⁹⁰ This means that pretrial detention is appropriate for only a limited number of purposes: namely, to prevent flight, interference with evidence, and the recurrence of serious crime.⁹¹

In support of these potential justifications for pretrial detention, the prosecution must present an adequately substantiated rationale as to why pretrial detention is required for the particular accused.⁹² Reference to the severity of the charges is insufficient. As stated

⁸⁹ Human Rights Committee, *Izmet Oselik et al v. Turkey*, U.N. Doc. CCPR/C/125/D/2980/2017, September 23, 2019, para. 9.3.

⁹⁰ Human Rights Committee, *Cedeno v. Bolivarian Republic of Venezuela*, U.N. Doc. CCPR/C/106/D/1940/2010, December 4, 2012, para. 7.10.

⁹¹ Human Rights Committee, *Mikhail Marinich v. Belarus*, U.N. Doc. CCPR/C/99/D/1502/2006, August 19, 2010, para. 10.4.

⁹² See Human Rights Committee, *Cedeno v. Bolivarian Republic of Venezuela*, U.N. Doc. CCPR/C/106/D/1940/2010, December 4, 2012, para. 7.10; Human Rights Committee, *Van Alphen v. the Netherlands*, U.N. Doc. CCPR/C/39/D/305/1988, July 23, 1990, para. 5.8; Human Rights Committee, *Mikhail Marinich v. Belarus*, U.N. Doc. CCPR/C/99/D/1502/2006, August 19, 2010, para. 10.4; Human Rights Committee, *Mukong v. Cameroon*, U.N. Doc. CCPR/C/51/D/458/1991, August 10, 1994, para. 9.8.

by the Committee, “[p]retrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.”⁹³

According to defense counsel, the investigating judge who ordered that Ms. Pasanova be detained pretrial relied solely on the gravity of the crime with which she had been charged.⁹⁴ This type of categorical reasoning belies the individualized assessment required by Article 9(1). As such, based on the information provided by defense counsel, Ms. Pasanova was subjected to arbitrary detention.

C. VIOLATIONS AT TRIAL

Right to Obtain the Attendance and Examination of Witnesses

Under Article 14(3)(e) of the ICCPR, all persons accused of a crime are entitled “to obtain the attendance and examination of witnesses on [their] behalf under the same conditions as witnesses against [them].” In the words of the United Nations Human Rights Committee, this provision “is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.”⁹⁵ Article 14(3)(e) does not establish an absolute right to call and examine witnesses but a right to call witnesses who are relevant,⁹⁶ if proposed in a timely manner in compliance with procedural requirements.⁹⁷

In *Allaberdiev v. Uzbekistan*, the Committee considered a case in which the accused was charged and convicted of drug-related offenses.⁹⁸ Defense counsel requested to call, among others, individuals involved with the investigation and individuals whom the accused alleged had planted the drugs.⁹⁹ Although these witnesses were central to the defense theory that the case was fabricated, the court rejected the request, deeming the proposed testimony irrelevant.¹⁰⁰ The Committee found a breach of Article 14(3)(e).¹⁰¹ Similarly, in *Saidov v. Tajikistan*, the Committee found a violation of Article 14(3)(e) where

⁹³ See Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 38.

⁹⁴ CHR did not have access to the detention order.

⁹⁵ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 39. See Human Rights Committee, *Sirozhiddin Allaberdiev v. Uzbekistan*, U.N. Doc. CCPR/C/119/D/2555/2015, May 18, 2017, para. 8.8.

⁹⁶ Human Rights Committee, *Saidov v. Tajikistan*, U.N. Doc. CCPR/C/122/D/2680/2015, September 20, 2018, para. 9.6.

⁹⁷ Human Rights Committee, *Johnson v. Spain*, U.N. Doc. CCPR/C/86/D/1102/2002, March 27, 2006, para. 6.5; Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 39.

⁹⁸ Human Rights Committee, *Sirozhiddin Allaberdiev v. Uzbekistan*, U.N. Doc. CCPR/C/119/D/2555/2015, May 18, 2017, paras. 2.1-2.21.

⁹⁹ *Id* at para. 3.5.

¹⁰⁰ *Id* at para. 3.5.

¹⁰¹ *Id* at paras. 8.8-8.9.

the court, “stating that the witnesses requested were too close to the accused and were interested in the outcome,” prevented the accused from calling 11 witnesses.¹⁰²

Motion to Call Witnesses

As discussed above, Ms. Pasanova’s lawyers argued that she had either acted in self-defense, warranting an acquittal, or that the alleged crime should be requalified as a violation of Article 141 of the criminal code, which criminalizes “grave harm to health inflicted in a state of sudden extreme emotional distress arising from unlawful violence or great insult from the victim, other unlawful actions of the victim, as well as a long-standing psycho-traumatic condition arising from the systematic unlawful or immoral conduct of the victim.” While a conviction under Article 138(3)(1) carries a sentence of up to ten years, a conviction under Article 141 carries a sentence of up to two years and six months.

On February 11, the start of the trial, defense counsel moved to call several of Ms. Pasanova’s neighbors as witnesses.¹⁰³ Counsel believed that the neighbors would testify that Mr. Isakov had regularly abused Ms. Pasanova: according to counsel, the neighbors had heard sounds of fighting and screaming coming from Ms. Pasanova’s apartment on a number of occasions.¹⁰⁴ This evidence of prolonged abuse would have heightened the likelihood that Mr. Isakov attacked Ms. Pasanova on the night of the incident, supporting the self-defense argument, and likewise would have supported the argument that Ms. Pasanova’s recurrent exposure to violence had engendered “extreme emotional distress.” The court rejected the defense motion on the ground that the neighbors’ testimony was irrelevant.¹⁰⁵

Defense counsel also requested to call the ambulance workers who attended to Mr. Isakov on the night of the alleged offense.¹⁰⁶ In line with the “extreme emotional distress” argument, defense hoped that these witnesses would provide further information about Ms. Pasanova’s state of mind at the time of the incident based on their observations of her physical appearance and demeanor.¹⁰⁷ The court, again stating that the testimony was irrelevant to the case, denied the motion.

This explanation, as in *Saidov* and *Allaberdiev*, was inadequate. Ms. Pasanova was entitled to call all witnesses relevant to the defense under Article 14(3)(e). The proposed witnesses possessed knowledge that was probative of central defense theories and were

¹⁰² Human Rights Committee, *Saidov v. Tajikistan*, U.N. Doc. CCPR/C/122/D/2680/2015, September 20, 2018, para. 9.6.

¹⁰³ To note, there were no allegations that counsel failed to comply with any procedural requirements with respect to requests to call and examine witnesses.

¹⁰⁴ Monitor’s Notes, March 5, 2020; Interview with Defense Counsel, April 6, 2020.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

thus clearly relevant. The court's preclusion of their testimony violated Ms. Pasanova's right to call and examine witnesses.

Expert Examination

Article 14(3)(e) encompasses the right to call relevant expert witnesses and commission relevant expert examinations. In *Khomidova v. Tajikistan*, for example, the UN Human Rights Committee found a violation where the court rejected the defense's request for a medical examination of the accused to determine whether the authorities had subjected him to torture.¹⁰⁸ In *Pustovalov v. Russian Federation*, the Committee examined a case in which the petitioner had been convicted for, among other things, raping several women.¹⁰⁹ The petitioner requested an expert examination to prove that he was unable to have children: an effort to show that he could not have been the perpetrator with respect to one of the victims, who had become pregnant following the alleged assault.¹¹⁰ The trial court declined this request.¹¹¹ As a result, the Committee concluded that the defendant's rights under Article 14(3)(e) had been violated.¹¹²

The UN Human Rights Committee has also found violations where courts have refused defense requests to appoint new experts to challenge opinions and evidence obtained during the investigation. In *Litvin v. Ukraine*, the Committee evaluated a case in which the petitioner had been charged with and convicted of the rape and murder of his sister-in-law.¹¹³ During the investigation, the authorities ordered an examination of the petitioner's clothes, which were found to be stained with the victim's blood.¹¹⁴ The defense disputed this finding and asked for an additional expert examination.¹¹⁵ The court denied the request, explaining - in part - that the initial examination provided an "exhaustive response."¹¹⁶ The Committee determined that the court's conduct contravened the guarantee established by Article 14(3)(e).¹¹⁷

As noted above, one of the defense's primary arguments was that Ms. Pasanova acted in "extreme emotional distress" due to long-term abuse, a situation explicitly envisioned

¹⁰⁸ Human Rights Committee, *Khomidova v. Tajikistan*, U.N. Doc. CCPR/C/81/D/1117/2002, July 29, 2004, para. 6.5. See also *Garcia Fuenzilada v. Ecuador*, U.N. Doc. CCPR/C/57/D/480/1991, July 12, 1996, paras. 3.5, 9.5.

¹⁰⁹ Human Rights Committee, *Pustovalov v. Russian Federation*, U.N. Doc. CCPR/C/98/D/1232/2003, May 10, 2010, para. 2.1.

¹¹⁰ *Id.* at para. 2.4.

¹¹¹ *Id.*

¹¹² *Id.* at para. 8.4.

¹¹³ Human Rights Committee, *Litvin v. Ukraine*, U.N. Doc. CCPR/C/102/D/1535/2006, September 15, 2011, paras. 2.1-2.2.

¹¹⁴ *Id.* at paras. 2.17-2.18.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at para. 10.4. See also European Court of Human Rights, *Stoimenov v. The Former Yugoslav Republic of Macedonia*, App. No. 17995/2, April 5, 2007, paras. 38-43.

by Article 141 of the Kyrgyz criminal code. As such, her mental condition at the time of the offense was central to the defense case.

Despite the importance of expert psychiatric testimony to Ms. Pasanova's defense, the court denied defense counsel's motion for an expert examination addressing Ms. Pasanova's state of mind at the time of the incident.¹¹⁸ According to the court, such an assessment would duplicate the psychiatric report that the state had produced: there was "no need for a second comprehensive forensic psychological and psychiatric examination to resolve new issues."¹¹⁹

The state's report, however, focuses not on whether Ms. Pasanova fatally injured her husband because of "extreme emotional distress" but on whether she was suffering from a mental disorder or any other ailment that would render her incompetent to stand trial.¹²⁰ It notes, for example: "the examinee is fairly well-groomed; her state of consciousness is unaltered. She is correctly oriented to person, place and time; talkative, answers questions to keep up the conversation. The examinee has no serious bodily complaint. Her attention is sustained, her span of attention and alertness are sufficient. Her thinking is slow and sequential."¹²¹

With respect to what occurred on the night in question, the report merely repeats the accused's account of events - that to "to defend [her]self, [she] struck him on the head with a reinforcing rod twice" - and concludes: "[a]t the time of the alleged offence, she had no temporary painful mental disorder. At the time of the alleged offence, the examinee was able to understand the nature and consequence of her actions and control them."¹²² There is no information or explanation as to the basis of this determination beyond the accused's description of events. There is likewise no analysis of whether the long-term abuse that Ms. Pasanova suffered at the hands of Mr. Isakov might have triggered her conduct.

As discussed above, the UN Human Rights Committee has made it clear that defendants are entitled to use expert witnesses where relevant, including to challenge expert examinations performed during the pretrial investigation. In Ms. Pasanova's case, the defense's request was clearly relevant, aimed at acquiring information on key issues left unaddressed by the initial findings. The judge's response mirrored that in *Litvin v. Ukraine*, where the court explained its denial of the defense request by deeming the pretrial examination an "exhaustive response." Consequently, as in *Litvin v. Ukraine*, the court's ruling constituted a violation of Article 14(3)(e).

¹¹⁸ Osh City Court, Ruling Against an Additional Psychiatric Examination, March 5, 2020.

¹¹⁹ *Id.*

¹²⁰ The Center for Mental Health of Osh Region, Forensic Mental Health Assessment of Gulzhan Pasanova, November 26, 2019.

¹²¹ *Id.*

¹²² *Id.*

Equality of Arms

The right to call and examine witnesses also relates to the principle of equality of arms, under which “the procedural conditions at trial and sentencing must be the same for all parties” and there must be a “‘fair balance’ between the parties, requiring that each party should be afforded a reasonable opportunity to present the case under conditions that do not place her/him at a substantial disadvantage vis-à-vis the opponent.”¹²³

In the proceedings against Ms. Pasanova, the court prevented the defense from calling key fact witnesses and also denied the defense motion for an expert examination central to the defense case. In contrast, the court granted all requests for witnesses submitted by the prosecution and admitted the aforementioned state psychiatric examination into evidence. The defense was thereby “place[d] ... at a substantial disadvantage vis-à-vis” the prosecution, in contravention of the principle of equality of arms.

Presumption of Innocence

Ms. Pasanova was confined within a metal cage for the duration of the courtroom proceedings, violating her right to the presumption of innocence - guaranteed by Article 14(2) of the ICCPR.

Under the ICCPR, the presumption can be breached through conduct suggesting that the accused is guilty. The UN Human Rights Committee, for example, has stated that “defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.”¹²⁴ If a defendant is caged, the state must offer some justification for this restriction.¹²⁵

In *Pustovoit v. Ukraine*, the Committee found a violation of Article 14(2) where the court “failed to demonstrate that placing the author in a metal cage during the public trial at the Supreme Court, with his hands handcuffed behind his back, was necessary for the purpose of security or the administration of justice, and that no alternative arrangements could have been made consistent with the human dignity of the author and with the need to avoid presenting him to the court in a manner indicating that he was a dangerous criminal.”¹²⁶

¹²³ Organization for Security and Cooperation in Europe, “Legal Digest of International Fair Trial Rights”, 2012, pg. 110. See also Human Rights Committee, *Bondar v. Uzbekistan*, U.N. Doc. CCPR/C/101/D/1769/2008, April 28, 2011, para. 7.5; Human Rights Committee, *Nazarov v. Uzbekistan*, U.N. Doc. CCPR/C/81/D/911/2000, August 19, 2004, para. 6.3.

¹²⁴ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 30

¹²⁵ See Human Rights Committee, *Selyun v. Belarus*, U.N. Doc. CCPR/C/115/D/2289/2013, December 9, 2015, para. 7.5; Human Rights Committee, *Mikhail Pustovoit v. Ukraine*, U.N. Doc. CCPR/C/110/D/1405/2005, May 12, 2014, para. 9.3.

¹²⁶ Human Rights Committee, *Mikhail Pustovoit v. Ukraine*, U.N. Doc. CCPR/C/110/D/1405/2005, May 12, 2014, para. 9.3.

In the present case, there was no explanation for the necessity of placing Ms. Pasanova in a metal cage. This measure thus contravened her right to the presumption of innocence. The injustice of Ms. Pasanova's confinement was exacerbated by the fact that, trapped in the cage, she was forced to endure a continuous barrage of insults and curses directed at her by Mr. Isakov's relatives.

Right to an Impartial Tribunal

Article 14(1) of the ICCPR mandates judicial impartiality. As stated by the United Nations Human Rights Committee: "judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. ... [T]he tribunal must also appear impartial to a reasonable observer."¹²⁷ The Committee has held that unreasonable decision-making can violate Article 14(1).

In *Khostikoev v. Tajikistan*, the Committee found an Article 14(1) violation due to rulings that hindered the preparation of an effective defense, such as "ignor[ing] [counsel's] objections" and "refus[al] to allow the possibility for the author to adduce relevant evidence."¹²⁸ Similarly, in *Toshev v. Tajikistan*, the Committee concluded that the court lacked impartiality where "several of the lawyers' requests were not given due consideration."¹²⁹

In the present case, the court rejected several defense requests, including for a comprehensive psychiatric examination and for the examination of witnesses who could offer testimony relevant to her defense. As in *Toshev* and *Khostikoev*, these decisions contravened baseline fair trial standards, evincing the court's partiality.

Additionally, the UN Human Rights Committee has found violations of Article 14(1) where courts have failed to address central defense arguments in issuing convictions.¹³⁰ As discussed in more depth below, the judgment in Ms. Pasanova's case omits any mention of the argument that she acted in self-defense or - at the least - that her actions should

¹²⁷ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 21. See also Human Rights Committee, *Karttunen v. Finland*, U.N. Doc. CCPR/C/46/D/387/1989, November 5, 1992, para. 7.2.

¹²⁸ Human Rights Committee, *Khostikoev v. Tajikistan*, U.N. Doc. CCPR/C/97/D/1519/2006, December 3, 2009, paras. 7.2-7.3. See also Human Rights Committee, *Khomidova v. Tajikistan*, U.N. Doc. CCPR/C/81/D/1117/2002, July 29, 2004, para. 6.5; Human Rights Committee, *Saidova v. Tajikistan*, U.N. Doc. CCPR/C/81/D/964/2001, July 8, 2004, para. 6.7.

¹²⁹ Human Rights Committee, *Toshev v. Tajikistan*, U.N. Doc. CCPR/C/101/D/1499/2006, April 28, 2011, para. 6.6.

¹³⁰ See *id.* at para. 6.6; Human Rights Committee, *Khostikoev v. Tajikistan*, U.N. Doc. No. CCPR/C/97/D/1519/2006, December 3, 2009, paras. 7.2-7.3.

be requalified under Article 141. In overlooking the core of the defense case, the judgment provides further basis for finding that the court violated the principle of judicial impartiality.

Right to Appeal: Duly Reasoned Judgment

Article 14(5) of the ICCPR establishes the right to appeal. As stated by the United Nations Human Rights Committee, exercise of the right to appeal necessitates a “duly reasoned” written judgment: if a court does not provide sufficient rationale for a conviction, a defendant cannot effectively challenge the decision before a higher tribunal.¹³¹ In *Van Hulst v. The Netherlands*, for example, the Committee, considering an Article 14(5) claim, indicated that courts must give “reasons” for dismissing a defense.¹³²

In the proceedings against Ms. Pasanova, the judgment fell short of the Article 14(5) standard because it failed to explain its dismissal of Ms. Pasanova’s defense. There was no doubt that Ms. Pasanova fatally injured her husband. The matter under dispute was her mental state at the time: whether she acted to defend herself, in reasonable fear for her life, or whether she acted in a state of “extreme emotional distress,” which would require that the crime be requalified under Article 141.

The extent of the court’s assessment of these issues is the following sentence: “the testimony of the accused during the trial that she committed it in a state of passion ... does not exempt her from criminal liability.”¹³³ The judgment does not address the self-defense argument, notwithstanding the fact that it recounts in detail Ms. Pasanova’s testimony that Mr. Isakov threatened her with a knife. There is likewise no analysis of whether Ms. Pasanova was experiencing “extreme emotional distress,” which would not have “exempt[ed] her from criminal liability,” but would have reduced her potential punishment.

As such, the judgment is not “duly reasoned.” It would be difficult for a defense lawyer reading the judgment to ascertain the reasoning behind the finding of guilt and the characterization of the crime, in violation of the Article 14(5) right to appeal.

D. OTHER FAIRNESS CONCERNS

¹³¹ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 49; Human Rights Committee, *Van Hulst v. Netherlands*, U.N. Doc. CCPR/C/82/D/903/1999, November 1, 2004, paras. 6.4-6.5. The violation of the right to appeal due to the absence of a duly reasoned judgment can also be characterized as a violation of the right to a reasoned judgment protected by Article 14(1).

¹³² *Van Hulst v. Netherlands*, U.N. Doc. CCPR/C/82/D/903/1999, November 1, 2004, paras. 6.4-6.5. See also Human Rights Committee, *Mennen v. Netherlands*, U.N. Doc. CCPR/C/99/D/1797/2008, August 24, 2010, para. 8.3; Human Rights Committee, *Hamilton v. Jamaica*, U.N. Doc. CCPR/C/50/D/333/1988, March 25, 1994, para. 9.1.

¹³³ Osh City Court, *Pasanova Judgment*, March 5, 2020.

Prosecutorial Misconduct

The prosecution's actions in the case against Ms. Pasanova breached best practices on prosecutorial ethics.

Under the United Nations Guidelines on the Role of Prosecutors, prosecutors must “at all times maintain the honour and dignity of their profession” and “respect and protect human dignity.”¹³⁴ Guidelines produced by the International Association of Prosecutors similarly require prosecutors to “always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession,” “at all times exercis[ing] the highest standards of integrity and care.”¹³⁵ The Consultative Council of European Prosecutors' Norms and Principles further note: “[p]rosecutors must earn the trust of the public by demonstrating in all circumstances an exemplary behaviour. They must treat people fairly, equally, respectfully and politely, and they must at all times adhere to the highest professional standards and maintain the honour and dignity of their profession, always conducting themselves with integrity and care.”¹³⁶

In the present case, the prosecutor insulted and screamed at Ms. Pasanova and her attorneys throughout the proceedings. On March 4, for example, after the defendant's alleged lover was examined, the prosecutor initiated a verbal exchange with Ms. Pasanova outside of the framework of legal procedure: she was not on the witness stand at the time. The prosecutor yelled: “Is what he said true? You saying you were not married? Why did you call him?”¹³⁷

On that same day, defense counsel asked the judge to read aloud the state psychiatric report, which included references to Ms. Pasanova's hospitalization as the result of abuse.¹³⁸ The prosecutor began to argue with defense counsel about this request, screaming: “complain to whoever you want.”¹³⁹ According to defense counsel, the prosecutor additionally yelled: “Who are you? Shut up, it's done. So shut up.”¹⁴⁰ When

¹³⁴ United Nations Office of the High Commissioner for Human Rights, United Nations Guidelines on the Role of Prosecutors, 1990, paras. 3, 12. Available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx>.

¹³⁵ International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, 1999, Principles 1.2, 1.3. Available at [https://www.iap-association.org/getattachment/Resources-Dokumentation/IAP-Standards-\(1\)/IAP_Standards_Oktober-2018_FINAL_20180210.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Dokumentation/IAP-Standards-(1)/IAP_Standards_Oktober-2018_FINAL_20180210.pdf.aspx).

¹³⁶ Council of Europe, Opinion No.9 (2014) of the Consultative Council of European Prosecutors to the Committee of Ministers of the Council of Europe on European norms and principles concerning prosecutors, December 17, 2014, para. 97. Available at <https://rm.coe.int/168074738b>.

¹³⁷ Monitor's Notes, March 4, 2020.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Interview with Defense Counsel, April 6, 2020.

counsel complained about this behavior, the prosecutor responded: “Who are you? Who brought you here? Shut up.”¹⁴¹

As documented by the monitor, the dispute over the psychiatric examination was reflective of the prosecution’s comportment throughout the trial. Although the judge at times intervened, ordering the prosecution to cease the yelling and insults, the prosecution continued to behave inappropriately.

In contravention of best practices, this conduct cannot be said to comply with the prosecution’s responsibility to act “professionally” and with “honour” and “dignity.”

Right to Freedom from Discrimination

Domestic Violence and Its Effects

Understanding of domestic violence and its effects has advanced over the past several decades, including with respect to why victims may stay with and ultimately kill their partners. Courts worldwide are thus increasingly relying on expert testimony about how the unique and ongoing nature of domestic violence impacts victims.¹⁴²

Battered Woman Syndrome (BWS) posits that domestic violence victims exist in a state of learned helplessness, meaning that the prolonged nature of abuse and its traumatic impact render victims passive: they do not leave.¹⁴³ The decision to stay is informed by “cycles of violence,” which consist of a period of escalation, during which tensions increase; a burst of violence, during which physical abuse is perpetrated; and a period of apology and penance, during which the abuser attempts to atone for his or her actions and promises they will not recur.¹⁴⁴ Due to the constant anxiety and fear engendered by this cycle, domestic violence victims can be triggered to violence by acts that might not provoke others.¹⁴⁵

In addition, criminal justice experts have noted that courts evaluating the reasonableness of victims’ actions against their abusers should consider the concrete dangers and obstacles faced by victims subjected to prolonged violence.¹⁴⁶ A high number of domestic

¹⁴¹ Id.

¹⁴² See Penal Reform International, “Women Who Kill in Response to Domestic Violence: How Do Criminal Justice Systems Respond?”, 2016. Available at https://cdn.penalreform.org/wp-content/uploads/2016/04/Women_who_kill_in_response_to_domestic_violence_Executive_summary.pdf.

¹⁴³ Paula Finley Mangum, “Reconceptualizing Battered Woman Syndrome Evidence: Prosecution Use of Expert Testimony on Battering”, *Boston College Third World Law Journal*, 1999, pgs. 601-602.

¹⁴⁴ Cheryl A. Terrance et al, “Expert Testimony in Cases Involving Battered Women Who Kill: Going Beyond the Battered Woman Syndrome”, *North Dakota Law Review*, 2012, pgs. 936-937.

¹⁴⁵ Id at pg. 938.

¹⁴⁶ Id at pgs. 947-950; Paula Finley Mangum, “Reconceptualizing Battered Woman Syndrome Evidence: Prosecution Use of Expert Testimony on Battering”, *Boston College Third World Law Journal*, 1999, pgs. 607-609.

violence victims, for example, are ultimately murdered by their partners: the threat of death is not illusory. Victims' children may also be at risk for serious harm or loss of life. In many cases, victims have repeatedly attempted to reach out to social services or the police to no avail. Consequently, victims who stay with their partners and subsequently take violent action may be responding not on the basis of pathology but on the basis of their immediate circumstances.¹⁴⁷

As discussed below, these theories should inform how judicial actors handle such cases, ensuring that prosecutions of domestic violence victims do not violate States' obligations under international human rights treaties, including the obligation to treat women equally.

Conduct of the Court and Prosecutor

Article 2 of the ICCPR mandates that States Parties treat all individuals equally, regardless of distinctions such as "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 3 requires States Parties to "undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant," while Article 14(1) provides that "[a]ll persons shall be equal before the courts and tribunals."

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) complements the right to equality set forth in the ICCPR. Article 2 obliges States to eliminate discriminatory practices by, among other things, "establish[ing] legal protection of the rights of women on an equal basis with men and ... ensur[ing] through competent national tribunals and other public institutions the effective protection of women against any act of discrimination"; "refrain[ing] from engaging in any act or practice of discrimination against women and ... ensur[ing] that public authorities and institutions shall act in conformity with this obligation"; "tak[ing] all appropriate measures to eliminate discrimination against women by any person, organization or enterprise"; and "tak[ing] all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."¹⁴⁸ Article 5(a) requires States Parties to eliminate prejudices as well as practices based on stereotypes.

The UN Committee on the Elimination of Discrimination Against Women has characterized state actors' lack of gender sensitivity and use of gender stereotypes in legal proceedings as a breach of Article 2 and Article 5(a).¹⁴⁹ In *Belousova v. Kazakhstan*,

¹⁴⁷ Id.

¹⁴⁸ CEDAW, Article 2(c)(d)(e)(f).

¹⁴⁹ See Committee on the Elimination of Discrimination Against Women, *V.K. v. Bulgaria*, U.N. Doc. CEDAW/C/49/D/20/2008, September 27, 2011, paras. 9.11-9.12. To note, the Committee does not always clearly distinguish between which specific acts are violations of Article 2 and which specific acts are violations of Article 5(a).

for example, the Committee considered a case in which a woman alleged that her employer had sexually harassed her. The authorities failed to adequately investigate the claim, which ultimately resulted in the woman's employer initiating a defamation suit against her.¹⁵⁰ The Committee noted that the presiding court, which ultimately ruled in favor of the employer, "referred to the fact that [the woman] did not complain about the alleged sexual harassment while she was still employed, but only after her dismissal, as a circumstance rendering her allegation less credible."¹⁵¹ This reasoning, derived from stereotypical conceptions of how a sexual harassment victim should act, displayed a disregard for the woman's "vulnerable position as a solo female wage earner subordinate to [the alleged perpetrator]."¹⁵² Taking into account the above circumstances, the Committee found that national institutions' insensitivity and reliance on gender stereotypes in handling the case violated Article 2 and Article 5(a).¹⁵³ Notably, the failure of courts to *intervene* when parties rely on gender-based stereotypes can also violate the Convention.¹⁵⁴

The Committee has further specified that state actors' failure to give due consideration to accounts of gender-based violence (often fueled by the stereotypes discussed above) violates Articles 2 and 5(a). In *S.T. v. Russia*, the Committee evaluated a case in which a woman subjected to long-term abuse by her husband was severely injured after he attacked her with an axe.¹⁵⁵ The prosecution pursued a light penalty, "reducing the classification of the crime with which the defendant was charged from attempted murder to inflicting serious bodily harm in a state of temporary insanity."¹⁵⁶ In turn, the court overlooked the history of domestic violence, affording excessive credence to the statements of individuals testifying on the defendant's behalf (who alleged that the victim had provoked the defendant) and insufficient "weight to testimonies of witnesses supporting the [domestic violence victim's] version of events."¹⁵⁷ Instead of considering the axe attack part of a broader pattern of abuse, the court found the defendant guilty of "inflicting serious bodily harm in a state of temporary insanity" and sentenced him to just nine months in prison.¹⁵⁸ The Committee subsequently determined that the conduct of the prosecutor and court in discounting the history of domestic violence violated Articles 2 and 5(a).¹⁵⁹

¹⁵⁰ Committee on the Elimination of Discrimination Against Women, *Belousova v. Kazakhstan*, U.N. Doc. CEDAW/C/61/D/45/2012, August 25, 2015, para. 2.10.

¹⁵¹ *Id.* at para. 10.10.

¹⁵² *Id.*

¹⁵³ *Id.* at paras. 10.8-10.10.

¹⁵⁴ Committee on the Elimination of Discrimination Against Women, *R.K.B. v. Turkey*, U.N. Doc. CEDAW/C/51/D/28/2010, April 13, 2012, paras. 8.7-8.8.

¹⁵⁵ Committee on the Elimination of Discrimination Against Women, *S.T. v. Russia*, U.N. Doc. CEDAW/C/72/D/65/2014, April 8, 2019, paras. 2.1-2.2, 2.9.

¹⁵⁶ *Id.* at para. 3.11.

¹⁵⁷ *Id.* at paras. 9.6-9.7.

¹⁵⁸ *Id.* at paras. 2.18, 9.6-9.7.

¹⁵⁹ *Id.* at paras. 9.6-9.7, 9.12.

In the present case, the prosecutor relied on gender stereotypes and the court did not intervene, in violation of Articles 2 and 5(a) of the Convention and, more broadly, the overarching right to be free from discrimination as provided by CEDAW and Articles 2,3, and 14 of the ICCPR. During closing arguments, for example, the prosecutor, claiming that Ms. Pasanova had in fact not been subjected to domestic violence, asked: “how could Gulzhan live with him and bear his children if she speaks so badly of him?”¹⁶⁰ This comment reflects a stereotypical conception of domestic violence victims, ignoring the reality that survivors often stay with their partners for the range of reasons discussed above, including BWS and limited access to institutional support.

The prosecutor likewise stated that Ms. Pasanova could not have been undergoing “extreme emotional distress” at the time of the incident due to the fact that such heightened states “last only one minute.”¹⁶¹ Again, this assumption regarding how domestic violence victims react to long-term abuse has been directly contradicted by domestic violence experts: as established by BWS and other theories, victims often operate in perpetual anxiety and fear, a state far from fleeting.

At times, the prosecutor appeared to engage in victim-blaming. She stated with reference to the alleged abuse, “[n]o one forced Pasanova to give herself away, she chose Mr. Isakov herself.”¹⁶² She further argued : “If you do not want to live with your husband, get a divorce. Why kill him then? All this led to your result.”¹⁶³

Meanwhile, the court and prosecutor’s disregard for the abuse suffered by Ms. Pasanova violated Articles 2 and 5(a) of the Convention and, more broadly, the overarching right to be free from discrimination as provided by CEDAW and Articles 2,3, and 14 of the ICCPR. The prosecutor charged the offense with the highest possible penalty despite extensive evidence that Ms. Pasanova had been subjected to prolonged abuse and, if not acting in self-defense, had at the very least acted on the basis of “extreme emotional distress.” Correspondingly, as discussed above, the court did not even mention the history of domestic abuse in its judgement, entirely discounting the possibility that Ms. Pasanova had been attacked on the night in question or psychologically affected by the violence.

The actions of the prosecutor and court thus fall far short of the obligations established by Articles 2, 3, and 14 of the ICCPR and Articles 2 and 5(a) of the CEDAW, violating Ms. Pasanova’s right to freedom from discrimination.

Criminal Responsibility

¹⁶⁰ Monitor’s Notes, March 5, 2020.

¹⁶¹ Monitor’s Notes, March 4, 2020; Monitor’s Notes, March 5, 2020.

¹⁶² Text of Audio Recording of Hearing, March 5, 2020.

¹⁶³ Id.

Courts should take prolonged domestic violence into account in determining guilt and appropriate sentences in cases where victims have harmed their abusers.

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, adopted by the General Assembly, state: “[w]hen sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women’s caretaking responsibilities and typical backgrounds.”¹⁶⁴ The reference to the “nature” of criminal conduct and women’s “typical backgrounds” means that a history of domestic violence should qualify as a mitigating factor.¹⁶⁵

The U.N. Special Rapporteur on Violence Against Women, Its Causes, and Consequences has echoed this assessment, noting: “[w]hile recognizing the gravity of their crimes, women’s criminality under situations of extreme abuse and violence needs to be treated with diligence, and their cases must be assessed in light of mitigating circumstances.”¹⁶⁶ In the Rapporteur’s words, “[t]he ‘battered women’ syndrome/defence may shed light into the circumstances in which a violent act was committed. Courts in a number of countries have acknowledged that battered women use force or kill as a way to defend themselves or respond to provocation. As a result, courts have given out more lenient sentences.”¹⁶⁷

Other UN bodies have gone a step further, stating that long-term abuse should serve as a complete defense when women employ violence preventatively. Several UN Special Rapporteurs took this position in a case in which a female Iranian national - Razia Ebrahimi - killed her husband in his sleep in response to prolonged physical and psychological abuse. Ms. Ebrahimi was subsequently prosecuted for and convicted of murder. The Rapporteurs said: “In domestic violence, the threat of violence by a persistently violent male partner has a cumulative impact as part of a pattern of behavior and a woman’s violent response should be interpreted as a defensive response to the cumulative acts of violence.”¹⁶⁸ In a subsequent communication to the United States, the Rapporteurs reiterated this stance, stating that it was unreasonable to expect women

¹⁶⁴ General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), U.N. Doc. A/C.3/65/L.5, October 6, 2010, Rule 61.

¹⁶⁵ Penal Reform International, “Women Who Kill in Response to Domestic Violence: How Do Criminal Justice Systems Respond?”, 2016, pg. 4.

¹⁶⁶ United Nations Human Rights Council, Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences: Mission to Tajikistan, U.N. Doc. A/HRC/11/6/Add.2, April 29, 2009, para. 37. Available at <https://www.refworld.org/docid/4a0bda662.html>.

¹⁶⁷ Id at fn. 43.

¹⁶⁸ Jan Arno Hessbruegge, “Human Rights and Personal Self-defense in International Law,” 2017, Oxford University Press, pg. 251. Available at https://books.google.no/books?id=K214DQAAQBAJ&pg=PA251&lpg=PA251&dq=the+united+nations+on+self+defense+laws+intimate+partner+violence&source=bl&ots=PQnohkZ9bL&sig=ACfU3U2l-DVOQTb_Qsv_SZjKOV8akmdwag&hl=fr&sa=X&ved=2ahUKEwjrwIDTz8zoAhWRjosKHWM6BSwQ6AEwEXoECAwQMw.

subjected to “persistent domestic violence” to wait to suffer grievous bodily harm before defending themselves.¹⁶⁹

In the present case, the court did not consider the long-term abuse inflicted on Ms. Pasanova either a mitigating factor or a complete defense. It is unclear if the court found the history of violence irrelevant or if it relied on the prosecutor’s misguided assumption that a victim would not have stayed with her abuser, thereby overlooking testimony and other evidence that Mr. Isakov had consistently harmed Ms. Pasanova. In any event, the court’s inattention to this abuse contravened international standards.

¹⁶⁹ *Id.*

CONCLUSION AND GRADE



The criminal proceedings against Ms. Pasanova were compromised by serious fair trial violations that directly impacted the outcome of her case. In particular, she was unable to present key expert and lay witness testimony. Additionally, neither the prosecutor nor court took Ms. Pasanova's experiences as a domestic violence survivor into account. As such, Ms. Pasanova's conviction and sentence contravene international law. With her case proceeding to appeal, Kyrgyz courts must comply with their obligations under the ICCPR and Convention to Eliminate All Forms of Discrimination Against Women.

GRADE:

D



GRADING METHODOLOGY

Experts should assign a grade of A, B, C, D, or F to the trial reflecting their view of whether and the extent to which the trial complied with relevant international human rights law, taking into account, *inter alia*:

- The severity of the violation(s) that occurred;
- Whether the violation(s) affected the outcome of the trial;
- Whether the charges were brought in whole or in part for improper motives, including political motives, economic motives, discrimination, such as on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,”¹⁷⁰ and retaliation for human rights advocacy (even if the defendant was ultimately acquitted);
- The extent of the harm related to the charges (including but not limited to whether the defendant was unjustly convicted and, if so, the sentence imposed; whether the defendant was kept in unjustified pretrial detention, even if the defendant was ultimately acquitted at trial; whether the defendant was mistreated in connection with the charges or trial; and/or the extent to which the defendant’s reputation was harmed by virtue of the bringing of charges); and
- The compatibility of the law and procedure pursuant to which the defendant was prosecuted with international human rights law.

Grading Levels

- A: A trial that, based on the monitoring, appeared to comply with international standards.
- B: A trial that appeared to generally comply with relevant human rights standards excepting minor violations, and where the violation(s) had no effect on the outcome and did not result in significant harm.
- C: A trial that did not meet international standards, but where the violation(s) had no effect on the outcome and did not result in significant harm.
- D: A trial characterized by one or more violations of international standards that affected the outcome and/or resulted in significant harm.
- F: A trial that entailed a gross violation of international standards that affected the outcome and/or resulted in significant harm.

¹⁷⁰ ICCPR, Article 26.