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KAZAKHSTAN: Fears over latest Uzbek extradition case

By Felix Corley, Forum 18

Makset Djabbarbergenov – a Protestant pastor wanted in his home country of Uzbekistan for "illegal" religious teaching and literature distribution – has been arrested by the authorities of Kazakhstan, where he sought refuge in 2007. He was detained after police held his sister-in-law for two weeks to find his whereabouts, family members told Forum 18 News Service. A court ordered on 7 September Djabbarbergenov be held in detention until Kazakhstan's General Prosecutor's Office decides whether to send him back. "As a person I can say this is not right," Daniyar Zharykbasov of Almaty's Bostandyk District Prosecutor's Office told Forum 18. "But we have to follow the rules." In June the United Nations Committee Against Torture condemned Kazakhstan for sending back 28 Uzbek Muslim refugees and asylum seekers in 2011. They were arrested on their return and at least some received long prison terms.

Friends of Uzbek religious refugee Makset Djabbarbergenov – who has lived with his family in Kazakhstan since 2007 – fear that the Kazakh authorities are about to return him to his homeland. The Uzbek authorities have been hunting him since 2007 for criminal trial to punish him for his religious activity. Police in Kazakhstan's commercial capital Almaty detained Djabbarbergenov on 5 September and two days later a court ordered him held in detention in the run-up to an extradition hearing. He was transferred on 8 September to Almaty's Investigation Prison, Forum 18 News Service has learnt.

Djabbarbergenov, who is now 32, is married with four boys, one of whom was born since the family's arrival in Kazakhstan. His wife Aigul Tleumuratova is expecting their fifth child next April.

Almaty's Bostandyk District Prosecutor Gani Seisembiev – who presented the detention suit to court – refused to discuss it. "I can't give any information by telephone," he told Forum 18 from Almaty on 10 September. He then put the phone down.

His assistant Daniyar Zharykbasov, who prepared the documentation in the case, told Forum 18 the Uzbek authorities put Djabbarbergenov on a wanted list for the Commonwealth of Independent States on 29 February 2012 for a "crime" he committed in 2007. "We have to respond to this request," he told Forum 18 on 10 September.

Askhat Primbetov, head of the Extradition Division of the International Co-operation Department at the General Prosecutor's Office, declined to comment on Djabbarbergenov's case. "When the documents arrive we will examine them and take a position," he told Forum 18 from the capital Astana on 10 September. "Until then we can't give any comment."

Asked about the United Nations Committee Against Torture's 1 June finding in a similar case that Kazakhstan had violated human rights obligations by extraditing to Uzbekistan a group of Muslim refugees and asylum seekers in 2011, Primbetov insisted that his government is preparing an official response to the Committee. "The Committee decision reached us officially only in August, and we have up to 90 days to respond. We are committed to responding." He declined to discuss the Committee's criticisms of those extraditions.

Wanted

Zharykbasov of Bostandyk District Prosecutor's Office told Forum 18 that the Uzbek authorities said Djabbarbergenov was wanted under Article 229-2 of the Uzbek Criminal Code, which punishes "violation of the procedure for teaching religion" and carries a maximum term of three years' imprisonment. He is also wanted under Article 244-3, which punishes "illegal production, storage, import or distribution of religious literature" and also carries a maximum term of three years' imprisonment.

Zharykbasov initially told Forum 18 the extradition case was not about religious activity. But told that the Uzbek authorities are seeking to imprison Djabbarbergenov because he led an unregistered Protestant church in his home town of Nukus in Karakalpakstan, Zharykbasov then expressed some sympathy for him. "As a person I can say this is not right," he told Forum 18. "But we have to follow the rules. We just collect the documentation, and Kazakhstan's General Prosecutor's Office will take the decision whether to extradite him or not."

Supreme Court

Ermik Rakhimbaev of the international department of Almaty city Prosecutor's Office is collecting all the materials related to Djabbarbergenov's case to be sent to the General Prosecutor's Office in Astana. "We're studying all the documents in the case at the moment and will send them on soon," he told Forum 18 from Almaty on 10 September.

Rakhimbaev confirmed that Djabbarbergenov has challenged the Kazakh authorities' denial of refugee status through the courts, a case that is still pending at the Supreme Court. "We'll wait until the Supreme Court has taken a decision," he claimed. However, he was unable to explain why Djabbarbergenov had been detained if the Supreme Court has yet to rule.

Sister-in-law detained

As they did not know where to find him, in late August police seized Djabbarbergenov's sister-in-law and held her for two weeks, family members complained to Forum 18. She was held first of all at the police before being transferred to a centre for the homeless. Eventually police found the telephone number of his wife, Aigul, in her mobile phone. Police seized her, and then came to the family home in Almaty on 5 September and arrested Djabbarbergenov. Only on 8 September was his sister-in-law released.

Both Zharykbasov of Bostandyk District Prosecutor's Office and Rakhimbaev of the city Prosecutor's Office said they had no information about the two-week detention of Djabbarbergenov's sister-in-law.

Detention

The detention request for Djabbarbergenov was prepared by Bostandyk District Prosecutor Seisembiev. It was approved by Bostandyk District Court No. 2 on 7 September, the court chancellor told Forum 18 on 10 September.

"They didn't tell us or the UNHCR [United Nations High Commissioner for Refugees] office about the hearing," Aigul Tleumuratova complained to Forum 18. "They gave Makset a state lawyer rather than allowing him to find his own. They claimed to me later that they had informed us about the hearing, but they didn't."

Zharykbasov of Bostandyk District Prosecutor's Office denied her claims to Forum 18. "The police told her about the hearing, and he had a state lawyer because he had no money to hire his own."

The UNHCR office in Almaty declined to comment to Forum 18 on Djabbarbergenov's case, citing individuals' confidentiality.

Hunted

Djabbarbergenov had led a Protestant community in his home town of Nukus, the capital of Uzbekistan's autonomous republic of Karakalpakstan [Qoraqalpoghiston], from 2001. He had been fined for his religious activity and had his home raided and Christian books confiscated.

He fled in August 2007 after anti-terrorism police raided his home, claiming he was holding an "illegal" religious meeting. Police detained him, but did not prevent him leaving the police station several hours later to attend to his distressed wife Aigul, who was seven months pregnant.

Soon afterwards, Djabbarbergenov left Nukus for the Uzbek capital Tashkent. On 20 August 2007, Nukus police issued a wanted poster (seen by Forum 18) stating that he was a follower of Isa Masih (Jesus Christ) and was being sought to face charges under Criminal Code Article 229-2. Police confirmed to Forum 18 from Nukus in October 2007 that they were still hunting for Djabbarbergenov (see F18News 12 October 2007 http://www.forum18.org/Archive.php?article_id=1034).

To evade arrest, Djabbarbergenov crossed into Kazakhstan on 11 September 2007, where he sought refugee status with the UNHCR. His wife and children joined him in 2008. The UNHCR's office in Almaty acknowledged in writing his and his family's status as refugees in a 26 February 2008 certificate, seen by Forum 18. "As a refugee," it notes, "he is a person of concern to the UNHCR, and should, in particular, be protected from forcible return to a country, where he would face threats to his life or freedom."

Refugee Law

Kazakhstan acceded to the United Nations 1951 Refugee Convention in January 1999. Article 33, Part 1 of the Convention declares: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

Kazakhstan adopted its Refugee Law in December 2009 (it came into force on 1 January 2010). It defined in Article 1, Part 1 as: "a foreigner who because of well-grounded fears what an individual could become a victim of persecution on the basis of race, ethnicity, religious faith, citizenship, membership of a certain social group or for political convictions finds themselves outside the

country of their citizenship and cannot avail themselves of their country's protection or does not wish to avail themselves of such protection as a result of such fears, or is a person without citizenship finding themselves outside the country of their permanent residence or citizenship who cannot or do not wish to return as a result of these fears".

Just before the adoption of the Refugee Law, the procedure for recognising refugees and asylum seekers was transferred from the UNHCR to the Kazakh government's Migration Committee, part of the Labour and Social Protection Ministry.

The Kazakh government refused to recognise decisions taken by the UNHCR and began a review of all cases. The International Federation for Human Rights (FIDH) notes, in a 3 September 2012 report on the impact on human rights of the Shanghai Co-operation Organisation (SCO), that of 120 UNHCR-recognised refugees whose cases were re-examined between June and October 2010, all but five were rejected.

"In examining cases with a particular connection to religious or political activity," FIDH noted, "members of Kazakhstan's government commission stated that the Kazakh authorities had no right to comment on the situation within Uzbekistan and China, which constituted part of the internal affairs of those states. Their position was that if Kazakhstan granted refugee status to Uzbeks or Chinese Uyghurs, its relationship with its SCO neighbours would suffer."

Rejection

On 3 March 2011, in a document signed by its deputy chief Lieutenant-Colonel Askhat Butunchinov and seen by Forum 18, Almaty City Migration Police rejected the appeal for refugee status from Djabbarbergenov, his wife and four children. It claimed that he did not meet the eligibility criteria for refugee status under Kazakhstan's Refugee Law. "According to Article 12, Part 1 of Kazakhstan's Refugee Law there is no ground for granting refugee status," the rejection letter claims. The letter noted that they were entitled to challenge the rejection in court.

Article 12, Part 1 of the Refugee Law gives as a reason for refusing refugee status: "the absence of well-grounded fears what an individual could become a victim of persecution on the basis of race, ethnicity, religious faith, citizenship, membership of a certain social group or for political convictions".

Successive court decisions – seen by Forum 18 – rejected Djabbarbergenov's appeal against the Migration Police's decision. The first came in a 17 October 2011 decision by Court No. 2 of Almaty's Almaty District. This was upheld by the appeals division of Almaty City Court on 6 December 2011. A panel of three judges at the cassation division of the same court rejected his further appeal on 2 February 2012.

The court decisions agreed with the Migration Police's claim that Djabbarbergenov did not meet the eligibility criteria for refugee status. They claimed he had not presented sufficient evidence of his claims that he would be persecuted for his faith were he to be returned to Uzbekistan.

Djabbarbergenov then lodged an appeal to Kazakhstan's Supreme Court. However, as of 10 September the Supreme Court had given no date for any hearing. Telephones at the Supreme Court's relevant departments went unanswered each time Forum 18 called that day to find out when the case will be heard.

Previous expulsion attempt

On 29 May 2008, the KNB seized Djabbarbergenov on the street near his Almaty home in an attempt to expel him back to Uzbekistan. The Uzbek authorities had claimed to the Kazakh authorities that he is an Islamic fundamentalist and terrorist

The Almaty office of the UNHCR confirmed to Forum 18 on 3 June 2008 that Djabbarbergenov had been detained by the Kazakh KNB as a result of an inquiry from Uzbekistan and was released on UNHCR's request (see F18News 4 June 2008 http://www.forum18.org/Archive.php?article_id=1139).

Commitments violated

Kazakhstan has earlier sent back refugees to Uzbekistan. On 9 June 2011, it sent back 29 men wanted by the Uzbek authorities on anti-state and religion-related charges, despite protests by human rights defenders. Relatives of the men say they were peaceful Muslims the authorities were seeking to punish for their religious activity.

Representatives of the men complained to the UN Committee Against Torture, arguing that they were at risk of torture if they were returned to Uzbekistan. On 1 June 2012, the Committee ruled that Kazakhstan had violated its commitments under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Reference CAT/C/48/D/444/2010 http://www2.ohchr.org/english/bodies/cat/docs/jurisprudence/CAT-C-48-D-444-2010_en.pdf).

The Committee found that "the pattern of gross, flagrant or mass violations of human rights and the significant risk of torture or

other cruel, inhuman or degrading treatment in Uzbekistan, in particular for individuals practising their faith outside of the official framework, has been sufficiently established". It pointed out that at least some of the complainants had already been subjected to "detention and torture" before they fled to Kazakhstan.

The Committee noted that the men were detained as soon as they arrived back in Uzbekistan and that some at least had received prison terms of more than ten years.

Kazakhstan had told the Committee that it had received "written guarantees from the General Prosecutor's Office of Uzbekistan that the complainants' rights and freedoms would be respected after the extradition and that they would not be subjected to torture or ill-treatment". However, the Committee noted that Kazakhstan's accepting such assurances without close monitoring of conditions in Uzbek detention was not enough.

The Committee Against Torture said the men should be brought back to Kazakhstan and given compensation. It asked the Kazakh authorities to respond to the findings "within 90 days".

While Primbetov of the General Prosecutor's Office insisted to Forum 18 his government will respond, the UN Committee Against Torture and Kazakhstan's Mission to the United Nations organisations in Geneva did not respond immediately to Forum 18's enquiries. (END)

For a personal commentary on how attacking religious freedom damages national security in Kazakhstan, see F18News http://www.forum18.org/Archive.php?article_id=564.

For more background, see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1352.

More reports on freedom of thought, conscience and belief in Kazakhstan can be found at <http://www.forum18.org/Archive.php?query=&religion=all&country=29>.

For more background, see Forum 18's Uzbekistan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1862.

Full reports on freedom of thought, conscience and belief in Uzbekistan can be found at <http://www.forum18.org/Archive.php?query=&religion=all&country=33>.

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

A printer-friendly map of Kazakhstan is available at <http://education.nationalgeographic.com/education/mapping/outline-map/?map=Kazakhstan>.

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