FORUM 18 NEWS SERVICE, Oslo, Norway
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The right to believe, to worship and witness
The right to change one's belief or religion
The right to join together and express one's belief

29 October 2012

KAZAKHSTAN: 15 years' jail for UNHCR-recognised refugee if deportation to Uzbekistan proceeds?

By Felix Corley, Forum 18 (https://www.forum18.org)

Uzbekistan is now seeking to extradite detained UNHCR-recognised refugee Makset Djabbarbergenov from Kazakhstan on charges which carry a maximum 15 year jail term. The Protestant who fled to Kazakhstan is being sought by Uzbekistan for exercising freedom of religion or belief in his home town of Nukus. A Kazakh 15 October Almaty court decision, authorised further detention until 5 November. The Kazakh court also claimed that the Uzbek charges – which seek to prosecute exercising freedom of religion or belief – can be equated to terrorism-related charges in Kazakh law. Djabbarbergenov's wife has been stopped by Kazakh authorities from visiting him, she told Forum 18 News Service, as has a human rights defender who found he is being held in "quarantine". The Supreme Court claims it cannot find an appeal he lodged in August. Also, Kazakhstan has yet to reply to a finding of the UN Committee Against Torture that it violated human rights obligations by extraditing to Uzbekistan a group of Muslim refugees and asylum seekers. Kazakhstan's current bid to join the UN Human Rights Council claims it would, if elected, "enhance the credibility and effectiveness of the Human Rights Council".

Court documents seen by Forum 18 News Service reveal that Uzbekistan is now seeking to extradite Protestant pastor Makset Djabbarbergenov from Kazakhstan on charges which carry a maximum 15 year prison term. A 15 October Almaty court decision, authorising further detention until 5 November, reveals that the Uzbek authorities have changed one of the two accusations to a charge carrying a punishment of between five and 15 years' imprisonment. An official from Kazakhstan's Almaty Prosecutor's Office told Forum 18 that they are still awaiting materials in the case from Uzbekistan's General Prosecutor's Office.

An earlier 7 September Almaty court decision, authorising Djabbarbergenov's initial 40-day detention while Uzbekistan's extradition request was considered, spoke of two Uzbek Criminal Code charges, each carrying a maximum three-year term. The Kazakh Prosecutor's Office confirmed this to Forum 18 (see F18News 10 September 2012 http://www.forum18.org/Archive.php?article_id=1739).

Meanwhile, the Kazakh government has not yet responded to the United Nations Committee Against Torture. In June the Committee found that Kazakhstan had violated the rights of a group of Uzbek Muslims who were extradited to Uzbekistan in 2011, and asked for a response to this from Kazakhstan (see F18News 10 September 2012 http://www.forum18.org/Archive.php?article_id=1739).

"We want him freed"

Djabbarbergenov's wife, Aigul Tleumuratova, complained to Forum 18 that it was only after the 15 October hearing (which she did not attend) that she too learnt that the Uzbek authorities are seeking to imprison her husband for up to 15 years. "We want him freed," she told Forum 18 from Kazakhstan's commercial capital Almaty on 28 October. "I and our older children are praying for him. We all miss him." Tleumuratova is expecting their fifth child next year.

Djabbarbergenov is still being held in Almaty's Investigation Prison (LA 155/1). Tleumuratova has not seen her husband since his arrest on 5 September. "Last Tuesday [23 October] I wrote to the Prosecutor's Office asking to be allowed a meeting, but have heard nothing," she told Forum 18. "They say we are only allowed a meeting once a month, and you have to apply through the Prosecutor's Office."

The address of the prison Djabbarbergenov is being held in is:

Almaty Investigation Isolation Prison No. 1 LA 155/1

050004 Almaty Region

Almaty

Prospekt Seifullina 473

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Kazakhstan

In 2011, Tleumuratova along with the rest of Djabbarbergenov's family was denied refugee status by the Kazakh government. This was despite the fact that in 2008 the United Nations High Commissioner for Refugees (UNHCR) had formally recognised their status as refugees (see F18News 10 September 2012 http://www.forum18.org/Archive.php?article_id=1739). Because the Kazakh government has denied her refugee status, Tleumuratova has no valid Kazakh government documents and so is unable to hand over parcels for her husband. However, she said friends have been able to pass on food and clothes too him in prison, as well as a Bible and medicines for a cold.

"Quarantine", attempted visits fail

Tleumuratova tried to visit her husband on 11 September, but was denied access at the prison. They told her he was, like all new prisoners, being held in "quarantine", which had been extended from three days to ten.

That same day, Ivar Dale, Regional Representative Central Asia of the Norwegian Helsinki Committee, also tried to visit him. He too was denied access, but was taken to a woman only identified as "the boss" on the prison's second floor, as he told Forum 18 from Almaty.

"The boss" told Dale that the Prosecutor's Office needs to give permission for any visit to Djabbarbergenov. "He is just sitting here, but they are the ones who have his case," she told him. "She had a file on him with some forms and fingerprints and such. I asked why it was necessary to have him in quarantine for as long as 10 days, as he had no personal items with him. She explained that during quarantine, the inmate is looked at by doctors, examined and so forth."

Despite "the boss'" insistence to Dale that Djabbarbergenov's wife could pass on personal items for him, Dale told Forum 18 this was the opposite of what the guards had told Tleumuratova that same day. When she returned later in the day with a bag of items for her husband, it was again refused.

"The boss" at the prison told Dale on 11 September that Djabbarbergenov would not be extradited for at least two or three months, "minimum", she kept repeating.

Hunted in Uzbekistan and Kazakhstan

The 32-year-old Djabbarbergenov fled his home region of Karakalpakstan in north-west Uzbekistan in August 2007 after police raided his home, claiming he was holding an "illegal" religious meeting. They confiscated Christian literature, money and a computer. Uzbekistan then started a nationwide manhunt for him (see F18News 12 October 2007 http://www.forum18.org/Archive.php?article_id=1034), and he crossed into Kazakhstan in September 2007.

Djabbarbergenov settled in Almaty and sought refugee status with the UNHCR. The UNHCR's Almaty office recognised 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." The certificate was renewed over the following years.

Uzbekistan continued to hunt him, and he was detained by the Kazakh KNB secret police in May 2008. He was only released after the UNHCR actively searched for him and sought his release (see F18News 4 June 2008 http://www.forum18.org/Archive.php?article_id=1139).

The "Voluntary pledges and commitments" supporting Kazakhstan's current bid to join the UN Human Rights Council notes that the country is a party to the UN Convention relating to the Status of Refugees. But the document does not mention Kazakhstan's denials of the refugee status of many people recognised by the UNHCR as refugees (see F18News 10 September 2012 http://www.forum18.org/Archive.php?article_id=1739). The country claims that, if elected to the Human Rights Council on 12 November, it would "enhance the credibility and effectiveness of the Human Rights Council".

In February 2012, Kazakh police moved to detain Djabbarbergenov again. 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. Eventually police found the telephone number of his wife, Aigul Tleumuratova, in her mobile phone. Police seized her, and then came to the family home in Almaty on 5 September (their youngest son's second birthday) and arrested Djabbarbergenov. Only on 8 September was his sister-in-law released.

On 7 September, Judge Lyudmila Bektemirova of Almaty's Bostandyk District Court No. 2 ordered Djabbarbergnov detained in Almaty's Investigation Prison for 40 days while the extradition case was considered. His family were not told of the hearing and Djabbarbergenov was unable to choose his own lawyer, being assigned state lawyer Alma Omarbekova (see F18News 10 September 2012 http://www.forum18.org/Archive.php?article_id=1739).

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Detention extended

On the afternoon of 15 October, three hours before the lawful detention period was due to expire, the same Judge Bektemirova of Almaty's Bostandyk District Court No. 2 accepted the Prosecutor's request that Djabbarbergenov's detention be extended to a total of two months. The Judge specified that this extends the detention period until 5 November, according to the court decision seen by Forum 18.

The Kazakh court decision notes that Investigator B. Saparniyazov of Uzbekistan's Police Investigation Department in Nukus opened the criminal case against Djabbarbergenov on 9 August 2007. [30 police and officials raided his home that day – see F18News 30 August 2007 http://www.forum18.org/Archive.php?article_id=1012.] Four days later, he was informed of the charges. On 22 August, Investigator F. Halimbetov ordered his arrest and issued a search order.

However, on 4 June 2008, the same Investigator Halimbetov issued a new charge sheet, with a change in one of the two accusations. He was now charged under Uzbek Criminal Code Article 229-2 and Article 244-2, Part 1. It is this one-page charge-sheet – seen by Forum 18 – which forms the basis of the extradition case.

Article 229-2 of the Uzbek Criminal Code bans "teaching religious beliefs without specialised religious education and without permission from the central organ of a [registered] religious organisation, as well as teaching religious beliefs privately", and carries a maximum term of three years' imprisonment. Article 244-2, Part 1 bans "creation, leadership or participation in religious extremist, separatist, fundamentalist or other banned organisations", which is punishable by five to 15 years' imprisonment.

What did Djabbarbergenov do?

The June 2008 charge sheet says that on 9 August 2007, Djabbarbergenov gathered eleven people in his Nukus home and "without specialised religious education and without permission from a central administration of a religious organisation taught them the teaching of the banned religious organisation Isa-Masih [Jesus Messiah]".

The charge sheet notes the seizure of religious literature and discs, as well as a computer and other equipment and money from his home.

The charge sheet then alleges that Djabbarbergenov "with the aim of creating the banned Isa-Masih sect and insistently carrying out its activity, recruited new members into its ranks and personally led and assigned them functional duties, gave useful recommendations and directions of a religious nature, as well as financing the functioning of this sect and determining its structure".

An Uzbek police officer from Nukus told Forum 18 in October 2007 that Djabbarbergenov "gathers people in his home for religious activity. Let him believe on his own, but this is agitation and he shouldn't do it. He doesn't have permission. He must have an official religious community to be able to do it." Asked why religious believers are not allowed to practice their faith freely, the policeman responded: "That's the law" (see F18News 12 October 2007 http://www.forum18.org/Archive.php?article_id=1034).

The charge sheet gives no indication as to why the second accusation had changed ten months after the 9 August 2007 raid on Djabbarbergenov's home.

Extradition request not yet arrived

On 15 October, Bostandyk District Prosecutor Gani Seisembiev – represented in court by his assistant Daniyar Zharykbasov – asked that the detention period be extended as it expired that day "but materials on the extradition of M. A. Djabbarbergenov have not yet arrived from Uzbekistan's General Prosecutor's Office".

Djabbarbergenov's lawyer, Yuri Stukanov, argued that as the "offences" of which Djabbarbergenov is being accused are not crimes in Kazakhstan and under Article 532 of Kazakhstan's Criminal Procedure Code an individual should therefore not be extradited, the Judge should not meet the Prosecutor's request.

However, the Court rejected the defence arguments as "not based in law". The court decision claimed that "in Kazakhstan's Criminal Code, the actions ascribed to M. A. Djabbarbergenov fall under the scope of Article 233-1 ("Propaganda of terrorism or public calls for the carrying out of an act of terrorism") and Article 233-2 ("Creation or leadership of a terrorist group or participation in its activity").

"Terrorism" is not mentioned in either article of the Uzbek Criminal Code or the Uzbek charge sheet. Forum 18 was unable to find out why Prosecutors and the Court regard exercising freedom of religion or belief as the same as terrorism. Prosecutor's Aide Zharykbasov's telephone went unanswered each time Forum 18 called on 29 October. Prosecutor Seisembaev had left for the day by the time Forum 18 reached his office on 29 October, as had Judge Bektemirova at the Court.

The Judge noted that the verdict takes effect immediately, though it could be appealed against within three days.

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Still waiting

Ermik Rakhimbaev of the International Department of Almaty city Prosecutor's Office told Forum 18 on 29 October that his office is still waiting to receive case materials from Uzbekistan's General Prosecutor's Office. "They send them to our General Prosecutor's Office in Astana and they then send them to us."

Asked when his office knew about the change of one of the accusations against Djabbarbergenov and whether the "crimes" the Uzbeks allege he committed are also considered "crimes" in Kazakhstan, Rakhimbaev declined to comment. "Astana decides everything, not me. Ask them."

However, Askhat Primbetov, head of the Extradition Division of the International Co-operation Department at Kazakhstan's General Prosecutor's Office in Astana, refused to answer any questions on Djabbarbergenov's case. "The case is now being considered," he kept repeating to Forum 18 on 29 October. "When we take the decision, we will definitely notify all the state organs that need to know."

"Lost" Supreme Court appeal?

Djabbarbergenov's friends told Forum 18 that he had appealed to Kazakhstan's Supreme Court over the Migration Police's March 2011 rejection of his and his family's appeal for refugee status. They say he appealed after the Cassation Division of Almaty City Court rejected his third appeal on 2 February 2012 (see F18News 10 September 2012 http://www.forum18.org/Archive.php?article_id=1739).

Djabbarbergenov's appeal is also mentioned in the 7 September Almaty Court decision. This stated that the fact that the Supreme Court has not yet ruled on the supervisory appeal in the asylum case is not a reason to reject the Prosecutors' suit to have Djabbarbergenov held in pre-extradition detention.

However, Anzhela Khan of the Supreme Court's Press Office told Forum 18 from Astana on 29 October that a search of their database could find no record of any appeal from or about Djabbarbergenov over the rejection of his asylum application.

Denis Dzhigava of the Kazakhstan International Bureau of Human Rights and the Rule of Law, which has supported Djabbarbergenov, confirmed on 29 October that the Bureau lodged his appeal with the Supreme Court in August. "We can't understand why they cannot find it," he told Forum 18. "It seems the application has been lost."

No response to UN

On 1 June, 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 (see F18News 10 September 2012 http://www.forum18.org/Archive.php?article_id=1739). It required Kazakhstan to respond within 90 days. Kazakhstan has so far given no official response, the Committee Against Torture told Forum 18 from Geneva on 29 October.

Primbetov of the International Co-operation Department of Kazakhstan's General Prosecutor's Office told Forum 18 on 10 September that the Committee decision "reached us officially only in August, and we have up to 90 days to respond. We are committed to responding" (see F18News 10 September 2012 http://www.forum18.org/Archive.php?article_id=1739).

However, on 29 October Primbetov refused to tell Forum 18 when his government's response to the UN Committee Against Torture is likely to be submitted. (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.

More 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.

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