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KAZAKHSTAN: Government "did the right thing" in allowing wanted Uzbek pastor to leave

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

Uzbek Protestant pastor Makset Djabbarbergenov was released from prison in Kazakhstan's commercial capital Almaty yesterday (4 December), reunited with his wife and four children and taken to the airport. They boarded a flight for Germany in the early hours of today (5 December), arriving safely in Europe, his friends told Forum 18 News Service. Facilitating the release and asylum in Europe was the United Nations High Commissioner for Refugees (UNHCR). Uzbekistan has been seeking to extradite Djabbarbergenov on charges which carry a maximum 15 year prison term to punish him for leading an unregistered Protestant community. His friends in Almaty told Forum 18 "we need to thank the Kazakh government – they did the right thing". Meanwhile, the Kazakh government – condemned by the United Nations Committee Against Torture for sending back to Uzbekistan 29 Muslim asylum seekers who alleged they would face torture – has insisted to the UN that they have checked that none was tortured in prison in Uzbekistan.

Three months after he was detained on an extradition request from Uzbekistan, Protestant pastor Makset Djabbarbergenov was suddenly released from prison in Kazakhstan's commercial capital Almaty on 4 December and put on a flight out of the country in the early hours of today (5 December). He, his wife and four children arrived safely in Frankfurt airport this morning and travelled on to a third country in Europe, Forum 18 News Service has learnt. Although border guards at Almaty airport told Djabbarbergenov as he left that he was banned from re-entering Kazakhstan until 2017, his friends in the city told Forum 18 "we need to thank the Kazakh government – they did the right thing".

Uzbekistan has been seeking to extradite Djabbarbergenov on charges which carry a maximum 15 year prison term.

Meanwhile, on 8 November the United Nations (UN) Committee Against Torture received the official Kazakh government response to its June finding that Kazakhstan had violated the rights of a group of Uzbek Muslims who were extradited back to Uzbekistan in 2011. It claimed that no sign of torture by the Uzbek authorities was detected (see below).

The UN Committee Against Torture found in November 2007 that the use of torture by state officials in Uzbekistan is "routine" (see Concluding Observations CAT/C/UZB/CO/3) (see F18News 14 August 2012 http://www.forum18.org/Archive.php?article_id=1732).

Askhat Primbetov, head of the Extradition Division of the International Co-operation Department at Kazakhstan's General Prosecutor's Office, declined to comment to Forum 18 on 5 December on Djabbarbergenov's case or on the Kazakh government response to the UN Committee Against Torture.

UNHCR facilitation

Djabbarbergenov's release from prison and resettlement in Europe was facilitated by the United Nations High Commissioner for Refugees (UNHCR), whose officials met him on release from prison, took him to their office and then directly to the airport. Djabbarbergenov's friends said the UNHCR officials stayed at the airport to see him safely through passport control to ensure there were no last-minute problems.

Similarly welcoming Djabbarbergenov's release from prison and departure from Kazakhstan was human rights defender Denis Dzhibvaga, who heads the refugee programme at the International Bureau for Human Rights and Rule of Law. "This was a good step," he told Forum 18 from Almaty on 5 December.

However, Dzhibvaga pointed out that in his view Djabbarbergenov qualified as a refugee in Kazakhstan and should have been granted the right to remain in the country and gain citizenship there. "I have known Makset since he arrived here seeking refuge in 2007 – he always said he wanted to remain here," Dzhibvaga told Forum 18. "I saw no reason why Kazakhstan rejected his asylum application. He would have been an asset to Kazakhstan."

Freed from prison

Djabbarbergenov was arrested in Almaty on 5 September and on 7 September a court ordered his detention for 40 days while the extradition case was considered. This period was extended on 15 October and again on 5 November while further documentation was awaited from the Uzbek General Prosecutor's Office. Throughout his three-month detention, he was held in Almaty's pre-trial detention prison.

The Uzbek authorities' charge sheet said Djabbarbergenov was charged under Uzbek Criminal Code Article 229-2 and Article 244-2, Part 1. Article 229-2 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 (see F18News 29 October 2012 http://www.forum18.org/Archive.php?article_id=1760).

However, on 4 December – just before the latest detention period was due to expire – the Kazakh authorities allowed the UNHCR to collect Djabbarbergenov from the prison and take him to Almaty airport. "One prison guard told Makset as he was leaving the prison that Uzbek embassy officials were there to collect him," one of Djabbarbergenov's friends told Forum 18. "He was worried, but then saw the UNHCR officials and was relieved."

He was reunited with his wife and children at the UNHCR office before being taken directly to the airport. The family took only the luggage they could check in and carry on the plane. About twenty members of Djabbarbergenov's church in Almaty gathered at the airport to see the family off.

"UNHCR's security was tight," the friend continued. "Although border guards consulted for some time looking at Makset's travel document before letting him through, the UNHCR stayed to see him through." Given Uzbekistan's record of seizing wanted individuals in other neighbouring countries, Djabbarbergenov's friends had some concerns about the plane's stopover in Astana en route to Frankfurt, so were relieved to hear he had safely reached Germany.

"Makset wants to come back here, but it's unclear when he will ever be able to," the friend told Forum 18.

Hunted by Uzbekistan

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 February 2008. However, in 2011 the Kazakh authorities denied them refugee status, a finding they tried to challenge through the courts.

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 Supreme Court in Astana has still not ruled on Djabbarbergenov's final appeal against the denial of refugee status. "They claim they have lost the case," Dzhivaga told Forum 18. "This has happened in other such cases."

Government responds to UN

On 1 June, the UN Committee Against Torture found that Kazakhstan had violated human rights obligations by extraditing to Uzbekistan a group of 29 Muslim refugees and asylum seekers in 2011 (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 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 10 years. The Committee gave the Kazakh government 90 days to respond (see F18News 10 September 2012 http://www.forum18.org/Archive.php?article_id=1739).

The 8 November official Kazakh government response – with information prepared by Kazakhstan's General Prosecutor's Office – claimed that between 3 and 14 August, Kazakh diplomats had interviewed 18 of those extradited back to Uzbekistan, all of them now in prison.

"None of the visited convicts indicated to have been subjected to torture, unlawful measures of physical and moral pressure or other impermissible methods of investigation," the UN summarised the Kazakh response as claiming. "All of them were assigned ex

officio lawyers and could retain lawyers privately. None of them complained about the conditions of detention, the food or the medical care provided." It added that "upon request by the Kazakh diplomatic service, medical examinations of the 18 complainants were carried out and no signs of beatings or torture were disclosed". The Kazakh government submitted what it said were statements to the UN Committee attesting to this signed by the prisoners.

The Kazakh government, citing officials from Uzbekistan, told the UN that a further seven of those extradited are still under investigation, adding that Kazakh officials' "meetings with them will be arranged at a later stage". It said the other four were not in detention – one had been sentenced and amnestied, while the other three were given non-custodial sentences.

"The Committee Against Torture will consider at its next session in May 2013 whether it is satisfied with the government response or not," the Committee told Forum 18 from Geneva on 5 December.

Refugee Law concerns

Human rights defenders, including Dzhivaga, have long been concerned about provisions of Kazakhstan's 2009 Refugee Law, which came into force on 1 January 2010.

Article 12, Part 5 of the Law requires refugee applications to be rejected "if there is a significant basis to suppose that the individual participates or has participated in the activity of terrorist, extremist and banned religious organisations, functioning in the country of which the individual is a citizen or in the country from which they have arrived".

Similarly, Article 13, Part 5 requires refugee status to be removed if an individual "has been sentenced for participating in the activity of terrorist, extremist and banned religious organisations".

Dzhivaga insists these and other provisions of the Refugee Law are not in compliance with the 1951 UN Refugee Convention. He points out that in countries like Uzbekistan, where unregistered religious activity is automatically deemed illegal, individuals who had simply exercised their right to freedom of religion or belief could be denied refugee status.

"This is not acceptable, but unfortunately the government shows no willingness to change this," Dzhivaga lamented. (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>.

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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