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KAZAKHSTAN: Why was Muslim prisoner of conscience extradited to Uzbekistan?

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

Kenes Zhusupov, Kazakh lawyer for Uzbek Muslim prisoner of conscience Khayrullo Tursunov, has told Forum 18 News Service that "I am outraged - Kazakhstan should have refused to extradite him". He commented that "the Uzbeks wanted him back as part of their campaign against Muslims who read the Koran and pray". The Kazakhstan International Bureau for Human Rights and the Rule of Law appealed for the extradition not to happen, as did on 28 February the UN Committee Against Torture (CAT). Yet on 13 March Tursunov was extradited to Uzbekistan. Forum 18 has been unable to get any official to explain why Kazakhstan defied the UN's request and broke both its international obligations and domestic law. The CAT is also investigating the fate of 29 Muslims extradited by Kazakhstan to Uzbekistan. "As the representative of the victims, I urge the Committee against Torture to be firm regarding Kazakhstan and request strong measures", Christine Laroque of Action des Chrétiens pour l'Abolition de la Torture (ACAT) told Forum 18. She suggested that the Committee "set up a mission with members of the CAT or independent experts to visit the complainants still detained and who are alleged to have been tortured in Uzbek jails".

The Kazakh lawyer for Uzbek Muslim prisoner of conscience Khayrullo Tursunov has condemned his government's decision to extradite his client back to Uzbekistan in March. "I am outraged - Kazakhstan should have refused to extradite him because of the unreliability of the accusations against him," Kenes Zhusupov told Forum 18 News Service from Aktobe, where Tursunov was arrested in April 2012 and held until March 2013.

"The Uzbeks wanted him back as part of their campaign against Muslims who read the Koran and pray", Zhusupov commented. Tursunov "peacefully practiced his faith outside state-controlled Islam", exiled Uzbek human rights defender Mutabar Tadjibayeva of the Fiery Hearts Club told Forum 18. Some relatives suspect that the authorities may have sought Tursunov in revenge for his wife's escape from Uzbekistan.

Once he arrived in the Uzbek capital Tashkent on 13 March, Tursunov was immediately arrested. He "may receive up to 15 years" in jail, police Colonel Isameddin Irisov told Forum 18 (see F18News 1 May 2013 http://www.forum18.org/Archive.php?article_id=1829).

Extradition – even after UN appeals for extradition to stop

The Kazakhstan International Bureau for Human Rights and the Rule of Law, in a 4 February appeal, noted that under the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment "the Kazakh authorities are obliged to desist from extraditing individuals to countries where torture is practised". The Bureau notes that "Uzbekistan is one of those countries where torture is a way of life". It called on the Kazakh government to respect its international commitments by not extraditing Tursunov.

On 28 February, the UN Committee Against Torture – in a letter seen by Forum 18 – had called on the Kazakh authorities not to extradite him while his complaint to the Committee was being considered (see below).

On 13 March, after eleven months' detention, Tursunov was put on a flight from Almaty to the Uzbek capital Tashkent.

The Almaty Office of the United Nations High Commissioner for Refugees (UNHCR) said it was unable to comment on Tursunov's case, citing confidentiality. "However, even if a person is not of concern to UNHCR, the Agency always calls on countries to follow the provisions of international instruments," it told Forum 18 from Almaty on 6 May.

Similar case

In a very similar case, the Committee against Torture is also investigating the fate of 29 Muslims illegally extradited by Kazakhstan back to Uzbekistan. "As the representative of the victims, I urge the Committee against Torture to be firm regarding Kazakhstan and request strong measures," Christine Laroque of the Paris-based Action des Chrétiens pour l'Abolition de la Torture (ACAT) told

Forum 18 from Paris on 7 May (see below).

Why?

Forum 18 was unable on 2 or 8 May to reach Iogan Merkel, a Deputy General Prosecutor of Kazakhstan who approved Tursunov's extradition to Uzbekistan, for an explanation for why Kazakhstan defied the UN's request and broke both its international obligations and domestic law. Forum 18 submitted written questions to him on 8 May, but received no response by the end of the working day in Astana.

Merkel's Assistant referred Forum 18 to the International Relations Department of the General Prosecutor's Office. But neither their phones nor those of Askhat Primbetov, head of the Extradition Division of the International Co-operation Department at the General Prosecutor's Office, were answered on 2 or 8 May.

Asylum rejected, arrested after request from Uzbekistan

Tursunov – who is now 38 - fled Uzbekistan for neighbouring Kazakhstan in September 2009, settling in Almaty. His application for asylum in Kazakhstan was rejected by the Almaty Department of Kazakhstan's Migration Committee on 6 October 2010, court documents seen by Forum 18 reveal.

On 24 February 2012, Uzbek criminal charges were brought against Tursunov, and his arrest was ordered (see F18News 1 May 2013 http://www.forum18.org/Archive.php?article_id=1829).

After learning of the arrest order from Uzbekistan, the Kazakh authorities arrested Tursunov in Aktobe on 7 April 2012 while he was travelling by train from Kazakhstan to Russia, court documents seen by Forum 18 reveal. On 9 April 2012, Aktobe City Specialised Administrative Court approved his detention, which was subsequently extended several times by the Court.

Tursunov was initially detained in Aktobe, but was transferred to a detention centre in Almaty in February 2013. While in prison in Aktobe, his lawyer Zhusupov visited Tursunov almost every week. "His morale was low," Zhusupov told Forum 18. "He was very worried he would be unjustly sentenced and tortured if he was returned to Uzbekistan."

Illegal extradition?

On 27 April 2012, Uzbekistan's Deputy General Prosecutor Khakimbay Khalimov formally asked the Kazakh General Prosecutor's Office to hand Tursunov over for prosecution. On 25 October 2012, Kazakh Deputy General Prosecutor Merkel approved the decision to extradite Tursunov.

On 9 November 2012 Zhusupov, Tursunov's lawyer in Kazakhstan, submitted a petition to Judge Raiiya Kustanova of Aktobe Court No. 2. This sought further information on the alleged criminal organisation which Uzbekistan accused Tursunov of organising and leading (see F18News 1 May 2013 http://www.forum18.org/Archive.php?article_id=1829). The court ignored the petition.

On 22 November 2012, Astana Regional Court referred Tursunov's appeal against extradition to Aktobe City Court No. 2. On 25 December 2012, Judge Kustanova upheld the extradition. The four-page decision, seen by Forum 18, reads that the Court in the case will "examine not whether or not Tursunov is guilty of the crimes, since that is not its duty, but the legality of the extradition".

Among other conditions when a person must not be extradited, Judge Kustanova indicates in her decision that according to Article 532 of Kazakhstan's Criminal Procedure Code, the authorities "must not extradite persons if there are grounds to suppose that the same persons may be subjected to torture in the requesting country."

Torture in Uzbekistan continues to be "routine", the Committee Against Torture has found (see F18News 14 August 2012 http://www.forum18.org/Archive.php?article_id=1732).

However, without considering whether or not Tursunov might be subjected to torture in Uzbekistan, Judge Kustanova stated that "the Court, on the basis of Kazakhstan's international obligations and law, did not establish any obstacles to the extradition of Tursunov."

Most of her decision simply recounts Uzbekistan's charges against Tursunov and the chronology of Kazakhstan's actions against him.

Officials at Aktobe Court No. 2 told Forum 18 on 2 May that Judge Kustanova was on holiday and not available. Forum 18 was referred to Zhanat Alniyazova, Chair of the Court's Chancellery. Asked why the Court upheld Tursunov's extradition, Alniyazova repeated Judge Kustanova's claim that the Court's role was to "examine not whether or not Tursunov was guilty of the crimes but the legality of the extradition".

Asked why the Court did not take into account the United Nations' and other human rights organisations' reports of torture in

Uzbekistan, Alniyazova could not say.

She referred Forum 18 to Akbulat Kurmantayev, the Chair of the Court. On 2 May the phones of both Kurmantayev and his Assistant went unanswered. Kurmantayev's phone was picked up a few times but put down without answering.

Appeal

On 3 January 2013, Tursunov appealed to Aktobe Regional Court, complaining that Deputy General Prosecutor Merkel and Judge Kustanova of Aktobe City Court No. 2 did not take into account inconsistencies in Uzbekistan's charges (see F18News 1 May 2013 http://www.forum18.org/Archive.php?article_id=1829). He also maintained that if he was handed over to Uzbekistan he would be ill-treated there by the authorities.

On 18 January, a panel of judges at Aktobe Regional Court chaired by Judge Nurilya Satybaldina rejected Tursunov's appeal and upheld the extradition. No further court appeal can be made in Kazakhstan.

The three-page 18 January decision, seen by Forum 18, repeats for the most part what is in Judge Kustanova's decision. Judge Satybaldina in similar fashion as Judge Kustanova in her decision, without saying anything on whether or not Tursunov may be subjected to ill-treatment, claims that "the Court, on the basis of Kazakhstan's international obligations and law, did not establish any obstacles to Tursunov's extradition."

Forum 18 was unable to reach Judge Satybaldina or any other official at the Regional Court on 8 May for comment.

"Kazakhstan's international obligations"

As the Kazakhstan International Bureau for Human Rights and the Rule of Law pointed out, Tursunov's return violated what Judge Satybaldina described as "Kazakhstan's international obligations". As Tursunov is likely to be tortured in Uzbekistan, if he is not already being tortured, his return has violated the UN Convention Against Torture. Kazakhstan acceded to the Convention in 1998, and Article 3 states:

"1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

Torture in Uzbekistan continues to be "routine", as the Committee Against Torture put it, with cases frequently being reported by victims to Forum 18. For good reason, victims (including children) of Uzbekistan's widespread use of torture normally choose not to complain or make their suffering public for fear of state reprisals (see F18News 14 August 2012 http://www.forum18.org/Archive.php?article_id=1732).

In a similar case to Tursunov's, in June 2012 the Committee Against Torture found that Kazakhstan had violated the human rights of a group of Uzbek Muslims who were extradited to Uzbekistan in 2011 (see F18News 10 September 2012 http://www.forum18.org/Archive.php?article_id=1739 and below).

In stark contrast, Kazakhstan did not extradite Uzbek Protestant Pastor Makset Djabbarbergenov (see F18News 5 December 2012 http://www.forum18.org/Archive.php?article_id=1777).

UN calls for extradition to be suspended

On 14 February, human rights defender Tadjibayeva lodged an individual complaint to the Committee Against Torture on behalf of Tursunov, as she noted on the Fiery Hearts Club website Jarayon.com.

The complaint was forwarded to the Kazakh government on 28 February, according to the United Nations Human Rights Treaties Division reply to Tadjibayeva the same day, seen by Forum 18. Kazakhstan was asked for its response to the complaint within six months.

"Please note that the [Committee against Torture's] Special Rapporteur on New Complaints and Interim Measures has decided to request the State party [Kazakhstan] to refrain from extraditing Mr. Tursunov Khairullo Turdiyevich to Uzbekistan, while his complaint is under consideration by the Committee", the 28 February UN letter states.

"Not the first case when Kazakh authorities violated their human rights obligations"

Human rights defender Tadjibayeva, head of the Fiery Hearts Club human rights organisation, based in Paris, condemned the Kazakh authorities' decision to extradite Tursunov while the UN was considering his complaint.

"This is not the first case when the Kazakh authorities violated their international human rights obligations and handed over refugees to Uzbekistan," she complained to Forum 18 on 19 April from Paris. "In Uzbekistan the authorities systematically torture and humiliate peaceful religious believers in prisons." She pointed to the extradition of 29 Muslim men to Uzbekistan.

29 Muslim men's extradition at UN

On 1 June 2012, the Committee Against Torture found that Kazakhstan had violated the human rights of a group of 29 Muslim men – 27 Uzbeks and two Tajiks - who were extradited to Uzbekistan in 2011. 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. It gave Kazakhstan 90 days to respond (see F18News 10 September 2012 http://www.forum18.org/Archive.php?article_id=1739).

An 8 November 2012 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 (see F18News 5 December 2012 http://www.forum18.org/Archive.php?article_id=1777).

Laroque of Action des Chrétiens pour l'Abolition de la Torture (ACAT) told Forum 18 that the Kazakh government's November 2012 response is being considered in private by the Committee Against Torture during its session in Geneva, which began on 6 May and continues until 31 May.

"As the representative of the victims, I urge the Committee against Torture to be firm regarding Kazakhstan and request strong measures," Laroque told Forum 18 from Paris on 7 May, "for instance to set up a mission with members of the CAT or independent experts to visit the complainants still detained and who are alleged to have been tortured in Uzbek jails." (END)

For a personal commentary by a Muslim scholar, advocating religious freedom for all as the best antidote to Islamic religious extremism in Uzbekistan, see http://www.forum18.org/Archive.php?article_id=338.

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

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>.

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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