

OPINION No. 53/2011 (UZBEKISTAN)

Concerning Mr. Akzam Turgunov (hereinafter Mr. Turgunov)

Communication addressed to the Government on 3 February 2011

The Government replied on 31 May 2011.

Request for further information, in accordance with paragraph 17(c) of the Methods of Work, was sent to the Government on 12 September 2011.

The Government has not replied to the Request.

The State is a Party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. The Human Rights Council assumed the mandate by its decision 2006/102. The mandate was extended for a further three-year period by resolution 15/18 adopted on 30 September 2010.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

I. When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (Category I);

II. When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);

III. When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III).

IV. When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (Category IV);

V. When the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other

opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (Category V).

Submissions

Communication from the Source

3. The source informs that Mr. Turgunov has been a human rights advocate since the mid-1990s. He is the Chairman of the Tashkent-based human rights group Mazlum ("The Oppressed"), which advocates on behalf of prisoners of conscience and protests the use of torture. He also is the founder and director of the Tashkent section of the Erk ("Freedom") political opposition party.

4. The source informs that, prior to his arrest, Mr. Turgunov was working full-time as a human rights public defender in the semi-autonomous region of Karakalpakstan. He was investigating corruption by local officials, including a case involving Police in the city of Manget.

5. Mr. Turgunov was arrested on 11 July 2008 at a tea house in Manget, Karakalpakstan, by agents of the Police. Mr. Turgunov was held at the Police Department at Manget city. At the end of 2008, he was transferred to Jaslyk prison, notorious for its harsh conditions, where he endured regular beatings. After approximately one month, he was transferred to Karshi Prison Work Camp, to serve his sentence.

6. Mr. Turgunov was charged with extortion of 20 million Uzbek Soums (approximately 15,000 US dollars) from Mr. Hujoboyev (Article 165.3 of the Criminal Code). In fact, according to the source, at the time of his arrest, Mr. Turgunov was meeting with Mr. Hujoboyev (his alleged victim) in an attempt to obtain money to satisfy a legal judgment on behalf of his client.

7. The source reports that, prior to the arrest, Turgunov was assisting Muborak Salayeva as a lay public defender in a dispute with her ex-husband, Aybek Hujoboyev, a wealthy landowner with strong ties to the local government. Ms. Salayeva was seeking to enforce a court settlement whereby Mr. Hujoboyev was ordered to provide her and their children with accommodation. She had been unable to enforce the settlement. Suffering from financial hardship since her divorce, Ms. Salayeva contacted Mr. Turgunov, who was known in the region for his ability to negotiate settlements in similar circumstances.

8. On 11 July 2008, according to the source, Mr. Turgunov went to a tea house with and at the request of Mr. Salayev to meet Mr. Hujoboyev. During the meeting, Mr. Hujoboyev handed Mr. Turgunov a plastic bag without explanation. Without opening the bag, Mr. Turgunov handed it to Mr. Salayev, who opened it and discovered 500,000 Uzbek Soums (worth approximately USD 330). Mr. Hujoboyev then left the tea house and the police entered, arresting both Mr. Turgunov and Mr. Salayev. The entire exchange was secretly video and audio recorded by the police.

9. The source states that charges against Mr. Turgunov by the Police of the city of Manget were fabricated and were brought as a pre-textual means to punish and silence him for his political and public activism and for his activities as a human rights defender.

10. In this regard, the source recalls that Mr. Turgunov was previously also detained from 1998 to 2000 under the charges of "abuse of office" and "official negligence". He was freed under an amnesty two years later, but since then he and his relatives were intimidated and harassed on many occasions. Mr. Turgunov was also denied an exit visa to travel abroad.

11. The source maintains that in the current case, the fact that the police agents were waiting outside the tea house with surveillance equipment, points to the likelihood that the incident was an official attempt by police to frame Mr. Turgunov.

12. It is reported by the source that Mr. Turgunov on 13 July 2008, during investigation, had an opportunity to confront Mr. Hujoboyev. During this investigative proceeding, Mr. Hujoboyev withdrew his allegations. He admitted that Mr. Turgunov had never tried to extort money from him and that the three men had met only to discuss the terms of the divorce settlement in which Mr. Turgunov had been engaged to negotiate on behalf of Mr. Hujoboyev's ex-wife.

13. The source alleges that the day following the confrontation, on 14 July 2008, when Mr. Turgunov was in his cell, someone, possibly the interrogator who was questioning him, approached Mr. Turgunov's from behind and poured boiling water on him, causing severe burns and loss of consciousness. According to the source, on 22 July 2008, Mr. Turgunov's attorney requested an investigation by the General Prosecutor Office into Mr. Turgunov's allegations of mistreatment but received no response. During a hearing on 16 September 2008, on the request of Mr. Turgunov, the court ordered a forensic examination of the accused. The examination confirmed the injury. However, the court found that Mr. Turgunov had not been tortured by authorities, apparently accepting denials by the alleged perpetrator as a fact.

14. On 23 October 2008, Mr. Turgunov was convicted by the Amuradinskii District Court, Karakalpakstan, on charges of extortion and sentenced to a 10 year imprisonment. The source submits that the trial was closed for the public, including for outside observers and activists.

15. In the source's view, the conviction of Mr. Turgunov is based almost entirely on the written statement of Mr. Hujoboyev taken at the investigation stage and later withdrawn. Mr. Turgunov's lawyer was not permitted to be present at the interrogation of Mr. Hujoboyev.

16. Although later Mr. Hujoboyev withdrew his allegations against Mr. Turgunov, the latter was not allowed to introduce this fact as evidence in court. Mr. Hujoboyev himself was not present at the trial and the accused was not given opportunity to examine him. The Prosecutor merely presented the withdrawn written statement to the court.

17. Mr. Turgunov's case was appealed to the Supreme Court of Karakalpakstan. The conviction was affirmed after a fifteen minute hearing in which Mr. Turgunov's lawyer was not permitted to present. Shortly after the hearing, Uzbek authorities revoked Mr. Turgunov's lawyer's law license. Subsequently, while Mr. Turgunov formally could appeal to the Supreme Court of Uzbekistan, he was unable to secure a legal assistance. Lawyers whom he contacted refused him for fear of harassment by the government and the loss of their law license.

18. The source contends that for approximately one month during his appeal, Mr. Turgunov endured regular beatings at Jaslyk prison. According to the source, Mr. Turgunov serves his sentence at Karshi prison work camp, a prison extremely overcrowded with insufficient access to water. He is forced to work 12 hours a day, seven days a week, in a factory making bricks. As a result, he weighs only 40 kilograms.

19. The source alleges that Mr. Turgunov's detention is arbitrary and based on politically motivated charges, being contrary to article 9 of the Universal Declaration of Human Rights ('UDHR') and article 9(1) of the International Covenant on Civil and Political Rights ('ICCPR').

20. In the source's view, his detention is also a result of Mr. Turgunov's exercise of his fundamental right to freedom of association embodied in article 20(1) of the UDHR and article 22 of the ICCPR. Further, his detention is also the result of the exercise of his fundamental right to participate in government, as protected by article 21(1) of the UDHR and article 25(a) of the ICCPR.

21. The source opines that, by torturing Mr. Turgunov during pre-trial detention; denying him access to an attorney; failing to grant him a trial by an impartial tribunal, and denying him the right to examine the witnesses against him, the authorities failed to observe the minimum international standards of a fair trial.

Response from the Government

22. In 1999, Mr. Turgunov had been convicted for the first time by Sabir Rahimov district court in Tashkent. He was sentenced to 5 years of deprivation of liberty in accordance with Criminal Code of Uzbekistan, Articles 205.2 and 207.1. He was released by the amnesty act of 30 April 1999.

23. On 23 October 2008, Mr. Turgunov was convicted by Amudaria district court. The conviction was upheld by the Appeals Chamber of the Supreme Court of Republic of Karakalpakstan on 11 December 2008. Mr. Turgunov was found guilty in commission of the offence provided for in Article 165.3 of the Criminal Code of Republic of Uzbekistan and sentenced to 10 years imprisonment in a minimum security prison.

24. The court found that Mr. Turgunov, in concert with H. Salaev, threatened to use violence on Hujabaev Oibek if he does not give them 20 million sum (Uzbek currency) to purchase a house for Salaeva Mubarak (Hujabaev's former wife). If Hujabaev Oibek were not pay the money, Turgunov and Salaev threatened to slander Mr. Oibek's mother, who works at the market, and also expressed threats to his brothers. Mr. Hujabaev reported these threats to a proper government department. On

11 July 2008, Mr. Turgunov and Mr. Salaev were detained at the moment when they were receiving part of the demanded amount, 500 thousand soums, from Mr. Hujabaev, as well as the technical passport on vehicle "Nexia" which belonged to Hujabaev's mother.

25. According to the reply, on 14 July 2008, Mr. Turgunov and his accomplice Mr. Salayev, in the presence of their lawyers, were formally charged with extortion of especially large amount, committed by organized group (Article 165.3 of the Criminal Code of Uzbekistan). Both accused were arrested on the order of the Criminal Court of Nukus city.

26. The Government reports that the guilt of Mr. Turgunov was proven by the testimonies of the victim O. Hujoboyev and witnesses M. Hujabaev, F. Rajapov, E. Sultanmuratov, S. Eshchanova; protocol of the special chemical processing of the currency; protocol of the examination of the crime scene; protocol of seizure of physical evidence; chemical expert report; hand-written receipt of Mr. Salaev, and other evidence.

27. The Government maintains that, from the moment of the detention of Mr. Turgunov, his constitutional rights were fully observed. He was provided with the assistance of legal counsel paid by the State. His relatives were timely informed of his arrest. From the moment of detention of Mr. Turgunov, all interviews and other investigative actions were conducted with participation of defence counsel Kalenderov. During the trial, his defence was conducted by attorneys R. Tuliaganov and R. Utamuratova.

28. As to the skin burns, the Government informs that an official investigation was carried out by the Investigative Division of the Ministry of Interior of Karakalpakstan Republic. The investigation found that, on 14 July 2008, during an interview in the investigation facility, Mr. Turgunov intentionally poured on himself hot tea and, as the result, got a thermal burn. He was immediately provided with medical treatment. In the course of the official investigation, the fact of intentional self-infliction of the burn was proven by the testimonies of the senior investigator Kutibaev, investigator Ismailov, and other members of the staff of the detention facility.

29. According to the Government's reply, during the trial, on the request of the defence attorney Tuliaganov, a medical examination was conducted by the Bureau of Forensic Examinations of Karakalpakstan Republic. According to the examination, Mr. Turgunov had thermal burn caused by high temperature. The burn was classified as a light bodily injury, which did not cause a health disorder. In the experts opinion, considering the character and location of the injury, it cannot be excluded that it was self-inflicted by Mr. Turgunov.

30. The Government informs that, upon the investigation, an officer of the Detention Unit was reprimanded for inadequate security measures in the detention of Mr. Turgunov.

31. Since January 2009, Mr. Turgunov serves his sentence in Shayhali prison. The Government refutes the allegations of mistreatment of Mr. Turgunov in the prison where he serves the sentence and inadequate conditions of the prison.

Comments from the Source

32. The source submits that the Government's reply provides a narrative of Mr. Turgunov's arrest, trial, and detention that inadequately addresses each of the source's concerns and leaves some of its most serious allegations unanswered.

33. The source notes in regard to the burns that the reply underestimates the size and which is inconsistent with the fact that a judge, upon seeing the scars in court two months after the burning occurred, stopped the trial in order to investigate.

34. According to the source, the Government also failed to adequately respond to allegations that Mr. Turgunov was regularly beaten while detained at the Jaslyk prison. The source reiterates that Mr. Turgunov is mistreated in the prison and is held in inadequate conditions.

35. The source concludes that the reply inadequately responds to the evidence that the Government of the Republic of Uzbekistan imprisoned Mr. Turgunov because he exercised fundamental human rights, convicted him in a trial that failed to meet international standards of due process, and repeatedly subjected him to torture and mistreatment. As such, his continued detention is arbitrary under Categories II and III.

Request for Further Information

36. On 12 September 2011, a request for further information, in accordance with paragraph 17(c) of the Methods of Work, was sent to the Government.

37. The Working Group regrets that the Government has not provided it with the requested information.

38. Despite the absence of further information from the Government, the Working Group, having received the relevant information from the source, considers it is in the position to render its Opinion on the detention of Mr. Turgunov in conformity with paragraph 16 of its Methods of Work.

Discussion

39. In its original reply, the Government failed to elaborate in sufficient details as to the matters that were proved by the witnesses mentioned in its reply. In particular, the forensic and other evidence which, according to the Government, prove the guilt of Mr. Turgunov, such as protocol of the chemical processing of the currency; protocol of the seizure of physical evidence; hand-written receipt of Mr. Salaev, etc., were apparently to support the allegations of receiving money by Mr. Salaev and Mr. Turgunov from Mr. Hujoboyev. However, this allegation itself would hardly constitute a crime considering the fact that the money were to be paid by Mr. Hujoboyev to his ex-wife Salaeva Mubarak, whom Mr. Turgunov and Mr. Salaev represented, in accordance with the legal settlement.

40. Indeed, it was the original, later withdrawn, statement of Mr. Hujoboyev about the alleged threats that formed the basis for qualification of the event as a criminal offence.

41. The Government does not refute the fact that Mr. Hujoboyev later withdrawn this allegation and admitted that Mr. Turgunov had never tried to extort money from him and that the three men had met only to discuss the terms of the divorce settlement in which Mr. Turgunov had been engaged to negotiate on behalf of Mr. Hujoboyev's ex-wife.

42. The statement of Mr. Hujoboyev regarding the alleged threats was crucial for the conviction evidence which goes to the heart of the case. In other words, it formed the fundamental basis for the conviction of Mr. Turgunov.

43. And yet, on the Prosecutor's request, despite the withdrawal of the statement by Mr. Hujoboyev, it was nevertheless admitted in court as evidence against Mr. Turgunov. Mr. Hujoboyev himself did not appear in the court and Mr. Turgunov was deprived of the opportunity to confront him at trial. The accused's reference to the subsequent withdrawal of the statement by Mr. Hujoboyev was ignored by the court. Mr. Turgunov's defence counsel was not allowed to be present during interrogation of Mr. Hujoboyev by the investigators and did not have an opportunity to examine him either at the investigation stage or during the trial.

44. The Working Group considers that deprivation of Mr. Turgunov's right to confront the witness, whose statement played a decisive role in securing his conviction, undermined the basic fair trial guarantees as provided for in Article 10 of the UDHR and Article 14(3)(e) of the ICCPR.

45. Moreover, in violation of Article 11 of the UDHR and Article 14(1) of the ICCPR, Mr. Turgunov was not granted a public hearing in his trial, the fact which has not been refuted by the Government. Indeed, it is the public character of hearing that protects an accused against the possible flaws in the administration of justice.

46. As to the allegations of inflicting thermal burns on Mr. Turgunov, the Working Group notices that the investigation into the event was not independent and impartial. According to the Government's reply, the investigation was conducted by Ministry of Interior which, on the basis of testimonies of the members of the jail staff, concluded that the burns were intentionally self-inflicted by Mr. Turgunov. The Government also failed to adequately respond to allegations that Mr. Turgunov was regularly beaten while at the Jaslyk prison.

47. The Working Group considers that the non-observance of the international norms relating to the right to a fair trial, established in the UDHR and the ICCPR, in this case is of such gravity as to give the deprivation of liberty an arbitrary character. Thus, the deprivation of liberty of Mr. Turgunov falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

48. On the basis of the information received, the Working Group considers that, in violation of Articles 19, 20 and 21 of the UDHR and Articles 19, 21, 22 and 25 of the ICCPR, the Government used an involvement of Mr. Turgunov in the resolution of a settlement in civil matters to prosecute and punish him for his human rights and political activities. The Working Group notes that Mr. Turgunov has been a leading figure in the human rights and opposition movements in Uzbekistan for more than 15 years.

49. It is noteworthy that Mr. Turgunov was arrested by the police of the same city where Mr. Turgunov investigated police corruption as a lay public defender. The fact of such investigation has not been refuted by the Government. The Government also has not refuted the allegations that Mr. Turgunov and his relatives were previously intimidated and harassed on several occasions because of his human rights activities and that he was denied an exit visa to travel abroad.

50. Thus, the deprivation of liberty of Mr. Turgunov falls also within category II of the categories applicable to the consideration of cases submitted to the Working Group.

Disposition

51. In light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mr. Turgunov has been arbitrary, being in contravention of Articles 9, 10, 11, 19 and 21 of the UDHR and Articles 9, 14, 19, 21, 22 and 25 of the ICCPR, to which the Republic of Uzbekistan is a State Party, and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

52. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Turgunov and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human-Rights.

53. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release of Mr. Turgunov and accord him an enforceable right to compensation pursuant to Article 9(5) of the ICCPR.

54. The Working Group refers the allegations of torture and cruel, inhuman and degrading treatment of Mr. Turgunov to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in accordance with paragraph 33(a) of the Revised Methods of Work of the Working Group on Arbitrary Detention.

Adopted on 17 November 2011