

Communication addressed to the Government on 13 April 2011

Concerning Azamjon Farmonov and Alisher Karamatov

The Government replied to the communication on 31 May 2011. The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.
2. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) 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 or her sentence or despite an amnesty law applicable to the detainee) (category I);
 - (b) 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);
 - (c) 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);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of 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; or 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. Mr. Azamjon Farmonov, born on XX December XXXX, of Uzbek nationality, married and father of one child,

living in Gulistan, is the head of the Sirdaria regional branch of the Human Rights Society of Uzbekistan (HRSU), an organization not recognized by the Uzbek authorities.

4. Mr. Alisher Karamatov, born on XX March XXXX in the town of Yaypan, Fergana region, of Uzbek nationality, married and father of one child, living in Gulistan, is the head of the Mirzaabad regional branch of HRSU.

5. According to the information received, Mr Farmonov and Mr Karamatov were arrested on 29 April 2006 in the town of Gulistan, Sirdaria region. At that point, Mr Farmonov's house was searched by law enforcement agents allegedly without a search warrant.

6. Prior to their arrest, Mr Farmonov and Mr Karamatov had published human rights bulletins entitled, "The rights of invalids" and "Where does the law 'disappear' to?", and also an article, "Sketches from the life of humbled farmers in Djizak (or the results of monitoring by Sirdaria human rights defenders in the Djizak district)". At the time of their arrest, Mr. Farmonov and Mr. Karamatov were involved in defending the rights of local farmers who had accused some district farming officials of malpractice, extortion and corruption.

7. According to the information received, Mr. Farmonov and Mr. Karamatov were kept incommunicado for at least a week following their arrest and were allegedly subjected to torture and ill-treatment with a view to forcing them to sign confessions. Gas masks with closed air valves were reportedly put on their heads, they were thrown up in the air and fell on their backs on the concrete floor, and their feet and heels were beaten with truncheons. Mr. Karamatov's feet swelled up and he was forced to go barefoot, as his feet would not fit into his shoes.

8. According to the information received, Mr. Karamatov has tuberculosis and blood has been detected in both of his affected lungs. He has been diagnosed with second degree muscular dystrophy and his medical condition has been defined as "serious".

9. On 16 May 2006, Mr. Farmonov and Mr. Karamatov were officially charged with extortion under article 165 of the Criminal Code of Uzbekistan. They were placed in investigation cell (prison) UY 64/SI-13 in the town of Khavast, 10 km from the town of Yangier.

10. It was not until 6 June 2006 that Mr. Farmonov and Mr. Karamatov were able to receive a lawyer of their own choice, the HRSU chairman, Tolib Yakubov. On 15 June 2006, the Yangier city court on criminal matters sentenced Mr. Farmonov and Mr. Karamatov to nine years' imprisonment each on the grounds of alleged involvement in extortion.

11. According to the information received from the source, Mr. Farmonov and Mr. Karamatov were never involved in any practices of extortion of money or property. Their activities were reportedly strictly limited to defending the farmers. According to the farmers, the agent of the Dashtaabad branch of the Unitary Petrol Company of the Djizak region, Mr. Mamatkulov, and his employees, sold farmers petrol for their tractors and short-changed them, selling the remaining petrol to criminal organizations in Tajikistan.

12. On 12 April 2006 a letter, drafted and signed by the farmers and Mr. Farmonov as their representative, was addressed to Mr. Sarimsakov, Director of the Unitary Petrol Company of the Djizak region. It contained allegations about inopportune distribution of petroleum products and short-changing at delivery by Mr. Mamatkulov and his employees.

13. Mr. Sarimsakov addressed a reply to the farmers' letter on 26 April 2006, stating that, following an inspection, no irregularities had been found in the service station run by Mr. Mamatkulov.

14. According to the information provided in the judgement, Mr. Farmonov and Mr. Karamatov met Mr. Mamatkulov on 28 April 2006, allegedly threatening him with publication on the Internet of the notification letter dated 12 April 2006. It was also stated in the judgement that Mr. Farmonov and Mr. Karamatov demanded money from Mr. Mamatkulov in exchange for the non-publication of the letter.

15. According to the source, there was no evidence nor were there any witnesses that expressly stated that Mr. Mamatkulov had given money to Mr. Farmonov or Mr. Karamatov or that he had been asked to do so. The witness accounts were similar in that they had all been asked by the police to collaborate in the case as eyewitnesses. All the witnesses were allegedly taken by the police to the place near which both Mr. Farmonov and Mr. Karamatov had been arrested. According to the source, the use of evidence based on testimonies of these witnesses was in alleged violation of articles 85, 86 and 87 of the Uzbek Code of Criminal Procedure.

16. In accordance with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (General Assembly resolution 53/144, annex), "[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels".

Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

17. The source argues that Mr. Farmonov's and Mr. Karamatov's detention is a direct consequence of their exercise of the right to freedom of expression as guaranteed, *inter alia*, in article 19 of the International Covenant on Civil and Political Rights, and of their work as part of HRSU. The source argues that at no point did their work involve extortion of money or property or any other criminal activity.

Response from the Government

18. The Working Group thanks the Government for its response received on 31 May 2011. The following information about the case concerning the two men was provided:

19. By judgement of Yangier City Court on Criminal Matters, Sirdaria district/region, dated 15 June 2006, confirmed by the Appellate District/Regional Court on Criminal Matters, dated 18 July 2006, Mr. Formonov and Mr. Karamatov were convicted of having committed offences under section 2, article 165 (Extortion), of the Criminal Code of Uzbekistan. They were sentenced to nine years imprisonment each, in colonies with a general regime.

20. According to the judgement, on 12 April 2006, Mr. Formonov together with Ms. Ymarova and Mr. Khaidarov, members of the local farms "Achi-Lolazor" and "Shuhrat Khaidarov", wrote a report to the president

of the Dashtaabad branch of the "Jizzahoil" Unitary Petrol Company, Mr. Sarimsakov, on the infringements allegedly committed by Mr. U. Mamatkulov, namely not providing the requested amount of fuel.

21. These allegations were examined by the commission of inquiry of the Unitary Petrol Company and were found to be untrue.

22. On 28 April 2006, Mr. Formonov entered into criminal association with his colleague, Mr. Karamatov, and met in the city of Yangier with Mr. U. Mamatkulov. They called themselves representatives of the Federation of Protection of Human Rights. They threatened Mr. U. Mamatkulov with posting their written report on the Internet and that way Mr. Mamatkulov would be fired from his job. They informed Mr. Mamatkulov that they would refrain from posting such a report on the Internet upon receipt of 600.000 Uzbek sum.

23. On 29 April 2006, at 7.30 a.m., Mr. Karamatov and Mr. Formonov were arrested upon receiving US\$ 200 and SUM 200,000 from Mr. Mamatkulov at the bus station (Tashkentska Street, city of Gulistan). Upon his arrest, Mr. Karamatov showed the police where he had hidden SUM 200,000. The police found US\$ 200 in his computer processor, which were taken and attached as evidence to the criminal case.

24. The fact that they had committed those crimes was corroborated by witness accounts (a couple of individual names of witnesses); photos; examination of the crime scene; and judicial and chemical expertise.

25. Allegations of psychological and physical violence, trial in closed session, violation of their rights to a lawyer, which were presented in their appeal request, were duly examined and were not confirmed.

26. In the course of the preliminary investigation, Mr. Formonov was represented by lawyers, Mr. Kholikberdiev and Mr. Namazov. The case includes Mr. Formonov's confession to having committed the crime under article 168 of the Criminal Code of Uzbekistan. The trial was public and included the participation of his lawyer, Ms. Mamadilaeva.

27. Regarding contempt of court by Mr. Formonov, he was sent out of the courtroom in accordance with article 272, part 2, of the Criminal Procedure Code. However, towards the end of the trial, Mr. Formonov was brought back to the courtroom. He was allowed to speak in his defence; however, he refused to respond to cross-examination and did not use his right to a final statement.

28. On 29 April 2006, Mr. Karamatov was arrested as a suspect in the case. On the same date, he was allowed to be assisted by his lawyer, Mr. A. Kholikberdiev, and was interrogated in his presence.

29. The Government denies allegations of torture or ill-treatment against Mr. Karamatov.

30. In the Government's response, received on 31 May 2011, the Working Group was informed that Mr. Formonov was serving his sentence at prison facility No. УЯ-64/71 (Zaslik city, Karapalkastan Republic, Uzbekistan). During his period at that facility, he had been subject to disciplinary measures for violating prison orders on 12 occasions. He was accorded eight long family visits. His health condition was satisfactory.

31. Mr. Karamatov was serving his sentence at prison facility No. УЯ-64/49 (Karshi city, Kashkadariinski district/region). On five occasions he had been subjected to disciplinary measures by the prison authorities for violating the prison's rules. He was accorded 11 long and 3 short family visits. His health condition was

satisfactory.

32. The response of the Government was transmitted to the source on 28 November 2011, but to date a response from the source has not been received.

Later developments

33. The Working Group has since been informed that Mr. Karamatov was conditionally released due to his deteriorating health on 12 April 2012, after serving six years of his nine-year prison sentence.

Discussion

34. In this case the question for the Working Group is whether the deprivation of liberty is the result of the exercise of the rights and freedoms in articles 19 (freedom of opinion and expression) of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). In cases of human rights defenders, there is a relationship between these rights of expression and the fair trial rights in articles 9 of both the UDHR and the ICCPR.

35. The Government has responded to the information from the source by giving an account of the formal steps of the criminal process against Mr. Farmonov and Mr. Karamatov. It has denied the allegations about violations of procedural rights and maltreatment. The Working Group is not in a position to make findings on these issues in the light of the information submitted to it.

36. The Government has confirmed that Mr. Farmonov and Mr. Karamatov were sentenced to nine years' imprisonment each for involvement in extortion. The Working Group recalls that the Government has explained the factual basis for the charges (see paragraphs 19-31 above).

37. According to the information received from the source, Mr. Farmonov and Mr. Karamatov were never involved in any practices of extortion of money or property.

38. The Working Group accepts that Mr. Farmonov and Mr. Karamatov were involved in work as human rights defenders. The question that the case brings up is whether they have abused their work for financial gain in a way that constitutes the criminal offence of extortion. This is the Government's argument. The source argues that Mr. Farmonov's and Mr. Karamatov's detention is a direct consequence of their exercise of the right to freedom of expression as guaranteed, *inter alia*, by article 19 of the ICCPR and their work as part of HRSU. The source argues that at no point did their work involve extortion of money or property or any other criminal activity.

39. The Working Group has considered the relationship between the detention and prosecution of Mr. Farmonov and Mr. Karamatov and their exercise of the fundamental rights to freedom of expression and association in their work as human rights defenders. The source alleges that their detention is in direct consequence of this and has no other grounds. The Government's reply is helpful in providing the dates and other formal aspects of the criminal procedures and other steps relating to the detention and sentencing of the two individuals. The Working Group subjects cases to heightened scrutiny when article 19 rights and work as human rights defenders are involved. In this case, Mr. Farmonov and Mr. Karamatov were sentenced to nine years' imprisonment each for involvement in extortion.

40. The severe reaction of nine years' imprisonment, the possible restriction on article 19 and article 9 rights and the work of the accused as human rights defenders in this case, put a heavy burden on the Government to show that the harsh punishment was not discriminating because of the human rights activities. The alleged disproportionate severity of the sentences set a higher threshold for the Government to overcome to satisfy the demands of the heightened scrutiny review. The Working Group would have needed further information from the Government that would directly rebut the allegations that the sentences were disproportionate. The Working Group thus finds that there are breaches of the human rights guarantees in articles 19 and articles 9 of the UDHR and of the ICCPR.

41. The arbitrary detention falls within category II of the categories applicable to the cases submitted to the Working Group. The appropriate remedy in this case is the retrial of Mr. Farmonov and adequate reparation to Mr. Karamatov and Mr. Farmonov in accordance with article 9, paragraph 5, of the ICCPR. The Working Group notes the release of Mr. Karamatov, for whom retrial would have been the appropriate remedy if he had remained in prison.

Disposition

42. In consideration of the fact that Mr. Karamatov was conditionally released on 12 April 2012, the Working Group, in accordance with paragraph 17 (a) of its methods of work, decides to file this case. However, pursuant to that paragraph, the Working Group reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. Therefore, the Working Group renders the following opinion:

(a) The deprivation of liberty of Mr. Karamatov was arbitrary, and constitutes a breach of articles 9 and 19 of the UDHR and of the ICCPR, falling within category II of the categories applicable to the cases submitted to the Working Group;

(b) The deprivation of liberty of Mr. Farmonov is arbitrary, and constitutes a breach of articles 9 and 19 of the UDHR and of the ICCPR, falling within category II of the categories applicable to the cases submitted to the Working Group.

43. The Working Group requests the Government to take the necessary steps to remedy the situation, which would include the retrial of Mr. Farmonov, and adequate reparation to Mr. Farmonov and Mr. Karamatov in accordance with article 9, paragraph 5, of the ICCPR.

44. In accordance with article 33 (a) of its revised methods of work, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action..

[Adopted on 22 November 2012]