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Working Group on Arbitrary Detention

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No. 53/2011 (Uzbekistan)

Communication addressed to the Government on 3 February 2011

Concerning: Akzam Turgunov

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. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102; the mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.

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 sentence or despite an amnesty law applicable to him) (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 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 informed the Working Group that Akzam 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 is also the founder and director of the Tashkent section of Erk (freedom) political opposition party.

4. The source informs that, prior to his arrest, Mr. Turgunov worked 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 the 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 and 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 (art. 165.3 of the Criminal Code) of 20 million Uzbek sum (approximately US$15,000) from Mr. Hujoboyev. However, 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 his arrest, Mr. Turgunov was assisting Muborak Saloyeva, as a lay public defender, in a dispute with her ex-husband Oybek Hujoboyev, a wealthy landowner with strong ties to the local government. Ms. Saloyeva was seeking to enforce a court settlement whereby Mr. Hujoboyev had been 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. Saloyeva contacted Mr. Turgunov who was known in the region for his ability to negotiate settlements in similar circumstances.

8. According to the source, on 11 July 2008, Mr. Turgunov went to a tea house with and at the request of Mr. Saloyev 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. Saloyev, who opened it and discovered 500,000 Uzbek sum (worth approximately US$330). Mr. Hujoboyev then left the tea house and the police entered, arresting both Messrs. Turgunov and Saloyev. 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 pretextual 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 had also been previously 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 have been 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. The source reported that during interrogation on 13 July 2008, Mr. Turgunov had an opportunity to confront Mr. Hujoboyev. During this investigative proceeding, Mr. Hujoboyev withdrew his allegations and admitted that Mr. Turgunov had never tried to extort money from him and that the three men had only met to discuss the terms of the divorce settlement that Mr. Turgunov had been engaged to negotiate on behalf of Mr. Hujoboyev's ex-wife.

13. The source alleges that the day following the confrontment, on 14 July 2008, when Mr. Turgunov was in his cell, someone – possibly the interrogator who had questioning him – approached Mr. Turgunov 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's Office into Mr. Turgunov's allegations of mistreatment, but received no response. During a hearing on 16 September 2008, at 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 10 years' imprisonment. The source submits that the trial was closed to the public, including 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 Mr. Hujoboyev later 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 the opportunity to cross-examine him. The Prosecutor merely presented the withdrawn written statement to the court.

17. Mr. Turgunov's case was appealed before the Supreme Court of Karakalpakstan. The conviction was affirmed after a 15-minute hearing in which Mr. Turgunov's lawyer was not permitted to present. Shortly after the hearing, Uzbek authorities revoked the law licence of Mr. Turgunov's lawyer. Subsequently, although Mr. Turgunov could formally appeal to the Supreme Court of Uzbekistan, he was unable to secure legal assistance. Lawyers whom he contacted refused him for fear of harassment by the Government and loss of their law licence.

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, which is extremely overcrowded and 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, and contrary to article 9 of the Universal Declaration of

Human Rights and article 9, paragraph 1 of the International Covenant on Civil and Political Rights.

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, paragraph 1 of the Declaration and article 22 of the Covenant. Further, his detention is also the result of the exercise of his fundamental right to participate in government, as protected by article 21, paragraph 1 of the Declaration and article 25 (a) of the Covenant.

21. The source is of the opinion that by torturing Mr. Turgunov during pretrial 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 was convicted for the first time by the Sabir Rahimov District Court in Tashkent. He was sentenced to 5 years' deprivation of liberty in accordance with articles 205.2 and 207.1 of the Criminal Code of Uzbekistan. He was released under the amnesty act of 30 April 1999.

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

24. The court found that Mr. Turgunov, in concert with H. Salayev, threatened to use violence on Oybek Hujoboyev if he did not give them 20 million Uzbek sum to purchase a house for Muborak Saloyeva (Mr. Hujoboyev's former wife). If Oybek Hujoboyev did not pay the money, Messrs. Turgunov and Saloyev threatened to slander Mr. Hujoboyev's mother, who works at the market; they also expressed threats against his brothers. Mr. Hujoboyev reported these threats to a relevant Government department. On 11 July 2008, Messrs. Turgunov and Saloyev were detained as they were receiving part of the demanded amount (i.e., 500,000 Uzbek sum) from Mr. Hujoboyev, as well as the technical certificate for the Nexia vehicle which belonged to Hujoboyev's mother.

25. According to the response, on 14 July 2008, Mr. Turgunov and his accomplice, Mr. Saloyev, in the presence of their lawyers, were formally charged with extortion of an especially large amount of money committed by an organized group (art. 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 Mr. Turgunov was proven guilty by the testimonies of the victim Oybek Hujoboyev and witnesses, M. Hujoboyev, F. Rajapov, E. Sultanmuratov, S. Eshchanova; the protocol of the special chemical processing of the currency; the protocol of the examination of the crime scene; the protocol of seizure of physical evidence; the chemical expert's report; the handwritten receipt from Mr. Saloyev, and other evidence.

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

28. As to the burns on his skin, the Government informed the Working Group that an official investigation was carried out by the Investigative Division of the Ministry of Interior of Karakalpakstan. The investigation found that on 14 July 2008, during an interview in the investigation facility, Mr. Turgunov intentionally poured hot tea on himself and, as a result, got a thermal burn. He was immediately provided with medical treatment. The fact of the intentional self-infliction of the burn during the course of the official investigation was supported 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, during the trial, at the request of defence attorney Tuliaganov, a medical examination was conducted by the Bureau of Forensic Examinations of Karakalpakstan. The examination concluded that Mr. Turgunov had a 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 the Working Group that on 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 has been serving his sentence in Shayhali prison.The Government refutes the allegations of mistreatment of Mr. Turgunov in the prison where he is serving his sentence as well as the inadequate conditions of the prison.

Comments from the source

32. The source submits that the Government's response 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, with regard to the burns, that the Government's response underestimates the size of the burn and is inconsistent with the fact that the judge, upon seeing the scars in court two months after the burning had 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 Government's response inadequately responds to the evidence that the Government of the Republic of Uzbekistan imprisoned Mr. Turgunov because he was exercising 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 of the categories applicable to consideration by the Working Group.

Request for further information

36. On 12 September 2011, the Working Group sent a request to the Government for further information, in accordance with paragraph 17 (c) of its methods of work.

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 that it is in a

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 response, the Government failed to elaborate in sufficient detail on the matters that were proved by the witnesses mentioned in its response. In particular, the forensic and other evidence which, according to the Government, prove Mr. Turgunov's guilt, inter alia, the protocol of the chemical processing of the currency; the protocol of the seizure of physical evidence; and the handwritten receipt from Mr. Saloyev, were apparently to support the allegations that Messrs. Turgunov and Saloyev received money from Mr. Hujoboyev. However, this allegation itself would hardly constitute a crime, considering the fact that the money was to be paid by Mr. Hujoboyev to his ex-wife Muborak Saloyeva, who Messrs. Turgunov and Saloyev represented, in accordance with the legal settlement.

40. Indeed, it was Mr. Hujoboyev's original statement, which he later withdrew, 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 withdrew the allegation and admitted that Mr. Turgunov had never tried to extort money from him, and that the three men had only met to discuss the terms of the divorce settlement which Mr. Turgunov had been engaged to negotiate on behalf of Mr. Hujoboyev's ex-wife.

42. The Mr. Hujoboyev's statement regarding the alleged threats was crucial for the conviction evidence at the centre of the case. In other words, it formed the fundamental basis for Mr. Turgunov's conviction.

43. And yet, at the Prosecutor's request, despite the Mr. Hujoboyev's withdrawal of his statement, it was nevertheless admitted in court as evidence against Mr. Turgunov. Mr. Hujoboyev himself did not appear in court and Mr. Turgunov was deprived of the opportunity to confront him at trial. The accused's reference to Mr. Hujoboyev's subsequent withdrawal of his statement was ignored by the court. Mr. Turgunov's defence counsel was not allowed to be present during the interrogation of Mr. Hujoboyev by the investigators, and did not have an opportunity to cross-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 Universal Declaration of Human Rights and article 14, paragraph 3 (e), of the International Covenant on Civil and Political Rights.

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

46. As to the allegations of inflicting thermal burns on Mr. Turgunov, the Working Group notes that the investigation into the event was not independent and impartial. According to the Government's response, the investigation was conducted by the Ministry of the Interior which, on the basis of testimonies from members of the prison 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 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 Universal Declaration of Human Rights

and the International Covenant on Civil and political Rights 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 Declaration and articles 19, 21, 22 and 25 of the Covenant, the Government used the involvement of Mr. Turgunov in the resolution of a civil settlement 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 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, as a lay public defender, he had investigated police corruption. The fact that such investigation took place has not been refuted by the Government. The Government has also 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 also falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

Disposition

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

> The deprivation of liberty of Mr. Turgunov is arbitrary, being in contravention of articles 9, 10, 11, 19 and 21 of the Universal Declaration of Human Rights and articles 9, 14, 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights, to which 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, paragraph 5, of the International Covenant on Civil and Political Rights.

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]