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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27–31 August 2012

No. 34/2012 (Uzbekistan)

Communication addressed to the Government on 6 April 2011

Concerning Abdurasul Khudonazarov

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 the 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. Khudoynazarov is a chairman of the human rights society Ezgulik in Angren city, Uzbekistan.

4. On 21 July 2005, Mr. Khudoynazarov was arrested by the members of the Angren Department of Internal Affairs on charges of extortion of money from Mr. Zokirov, an official of Okhangaron Department of Internal Affairs.

5. On 12 January 2006, the Angren City Court tried Mr. Khudoynazarov on charges of fraud (art. 168(1) of the Criminal Code), extortion (art. 165(2) of the Criminal Code); and acquisition, destruction, damage, or concealment of documents, stamps, seals and forms (art. 227(2) of the Criminal Code). Mr. Khudoynazarov was sentenced to 9 years and 6 months' imprisonment.

6. He has since been held in detention at high security colony No. 64/21, located in Bekobod, Syrdarya region, Uzbekistan. Reportedly, Mr. Khudoynazarov has been subjected to ill-treatment and harassment by prison officials, including severe beatings and death threats.

7. The source contends that Mr. Khudoynazarov's arrest and detention are linked to his work for the human rights society Ezgulik. Mr. Khudoynazarov's activities consisted in denouncing corrupt officials within the law-enforcement structures of the city of Angren. Since 1999, he has denounced numerous infractions relating to excess of authority by law enforcement agents while serving at the State Motor Vehicle Inspectorate (SMVI) of the city of Angren in the rank of Major of the Police.

8. In 2005, while working as a civil defence and emergency response instructor at Uzbekkuumir Public Corporation/Joint Stock Company, Mr. Khudoynazarov obtained information about a corruption incident involving allegedly unlawful financial activities between Ms. Eshounkulova and Mr. Zokirov, an inspector of Okhangaron Department of Internal Affairs. The source alleges that when Mr. Khudoynazarov attempted to reveal this information, he was set up by Mr. Zokirov.

9. It is the submission of the source that Mr. Khudoynazarov's detention is a direct consequence of his exercise of the right to freedom of expression as guaranteed inter alia by article 19 of the International Covenant on Civil and Political Rights and his exercise of the right to freedom of association, as recognized in article 22 thereof. The source further argues that his work for the human rights society Ezgulik consisted of legitimate human rights activities, namely in denouncing corruption within the law enforcement agencies.

10. In support, the source cites article 1 of 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, according to which "everyone has the right individually or 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”, as well as article 2 thereof.

11. Furthermore, the source contends that Mr. Khudoynazarov’s detention is arbitrary as it derives from partial non-observance of the guarantees enshrined in the right to a fair trial as provided inter alia under article 14 of the International Covenant on Civil and Political Rights.

12. In particular, the source alleges that in the course of the court proceedings, no evidence was brought to support the charges pressed against Mr. Khudoynazarov. Reportedly, the alleged victims pressing charges against Mr. Khudaynazarov were allowed by the Angren City Court to refuse to answer to many substantive questions raised by the defence. The source opines that this is contrary to article 14, paragraph 3 (e), of the International Covenant on Civil and Political Rights, which includes among minimum guarantees, the right “to examine, or have examined, the witnesses against him”. Moreover, this is said to be in violation of article 118 of the Uzbeki Code of Criminal Procedure, according to which “the victim may not refuse to testify on the grounds that the facts under clarification are related to the state or professional secrets, or to the intimate relations of the suspect, accused, defendant and other persons”.

13. In conclusion, the source submits that Mr. Khudoynazarov’s detention is arbitrary as it is a direct consequence of his activities as a human rights defender and his exercise of the right to freedom of expression and association. The source also submits that Mr. Khudoynazarov’s detention is arbitrary on the basis of alleged non-observance of minimum guarantees contained in the right to a fair trial.

Response from the Government

14. In its reply dated 6 April 2011, the Government informed the Working Group that Mr. Khudoynazarov was convicted by the Angren City Court on 12 January 2006 and the conviction was upheld by the Appeals Chamber of the Tashkent Regional Court on 2 March 2006.

15. Mr. Khudoynazarov was found guilty of commission of fraud (article 168.2 of the Criminal Code of Republic of Uzbekistan) and repeated acts of extortion in concert with other members of the group (article 165.2 of the Criminal Code). He was sentenced to nine years and six months’ imprisonment.

16. The Government reports that Mr. Khudoynazarov, while working as an instructor on civil defence and emergency response at Uzbekuumir and acting as a chairman of unregistered human rights society Ezgulik in Angren city, falsely accused Mr. Eshankulov of theft, arranged false accusations and, by means of threats and extortion, obtained from his mother 300 United States dollars.

17. Subsequently, in concert with Mr. Artykbaev, he again falsely accused Mr. Zakirov, an officer of Akhagaran Department of Internal Affairs, of having received, through Mr. Artykbaev, a bribe of 400 United States dollars from Mr. Artykbaev and Mr. Anarbaev. He threatened that he would report the accusations to the Office of the Prosecutor. On 21 July 2005, Mr. Khudoynazarov was arrested at the exact moment he was receiving 200 United States dollars and 50,000 sums from Mr. Zakirov.

18. According to the Government, the guilt of Mr. Khudoynazarov was proven by testimonies of victims Zakirov, Eshankulov, and witnesses Holdarov, Ismanaliev, Usmanaliev, Riskulova, Isakulov, Eshankulov, Gafurov, Dadanov, and others; protocol of money processing, protocol of seizure of physical evidence, and other evidence.

19. Currently Mr. Khudoynazarov serves his sentence in a penitentiary facility in Bekabad city. Mr. Khudoynazarov was subjected to disciplinary measures for repeated

breaches of prison regulations. He was granted nine long-term and eight short-term relatives' visits. His health condition is satisfactory. He has been diagnosed with chronic bronchitis, and has on several occasions been treated as an out-patient with this diagnosis.

Further comments from the source

20. The Government's response had been transmitted to the source for comments on 10 June 2011. On 28 November 2011, 12 April 2012 and 2 August 2012, the Working Group reminded the source of the convenience of submitting its comments or observations to the Government's response. However, to date, the source has not replied to the request. This may be explained by the fact that the submission was originally addressed to another human rights monitoring body and, later forwarded, to the Working Group.

Discussion

21. The Working Group observes that the Government has rebutted allegations, providing specific and detailed information on the case.

22. The Working Group notes that the assertions received from the source and the Government are in most respects contradictory.

23. Since the source has failed to comment on the observations of the Government and to contest them and, considering the serious difference between the allegations submitted by the source and the Government's response, the Working Group lacks sufficient information to determine whether or not the detention of Mr. Khudoynazarov is of an arbitrary character.

24. Pursuant to paragraph 10 (f) of the Working Group's methods of work, the absence of a response by the source can authorize the Working Group to file the case.

Disposition

25. Considering the serious discrepancy between the allegations submitted by the source and the Government's response, the Working Group concludes that it does not have sufficient elements to issue an opinion as to the arbitrary character of Mr. Khudoynazarov's detention or absence thereof. Therefore, in accordance with paragraph 10 (f) of the Working Group's methods of work, the Working Group decides to file the case.

[Adopted on 30 August 2012]