

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24)  
KAZ 1/2013

15 January 2013

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 16/4, 16/5, 17/2, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the conviction of Mr. **Vadim Kuramshin**, allegedly following serious irregularities in his trial and ill-treatment while in pre-trial detention, as well as a decision to suspend his defense lawyer, Ms. **Raziya Nurmasheva**, from the case and to strip her of her license to practice law.

Mr. Vadim Kuramshin is a defender of the rights of prisoners and a vocal critic of the conditions in Kazakh penitentiary institutions and alleged instances of cruel, inhumane and degrading treatment of prisoners.

Mr. Kuramshin has been the subject of two previous communications. The first of these was sent on 8 October 2010 in response to his arrest after an attempt to arrange a prison visit, prompted by an anonymous accusation that he was involved in drug trafficking. On 21 January 2011, a response to this communication was received. While we acknowledge the efforts made in investigating the events surrounding the arrest, it should be noted that from the sequence of events as laid out in this response, scant attention appears to have been paid to the trustworthiness of this anonymous accusation prompting the arrest of Vadim Kuramshin.

The second communication, dated 3 October 2011, mentioned concerns that had arisen following two arrests of Mr. Kuramshin during the weekend of 6-8 August 2011, and the alleged failure of the Prosecutor's Office to investigate his accusations that the proper procedures were breached during these arrests. A response was received dated 21

February 2012 although little information was provided therein responding to these specific allegations.

According to the information received:

Mr. Vadim Kuramshin was arrested on 23 January 2012 and charged the following day with extortion under Article 181 of the Criminal Code of the Republic of Kazakhstan.

Mr. Kuramshin's trial took place between 2 May 2012 and 28 June 2012. A jury found him not guilty of extortion but did find him guilty of arbitrariness under Article 327 of the Criminal Code of the Republic of Kazakhstan. Mr. Kuramshin was consequently sentenced to 1 year imprisonment by Zhambyl provincial court.

On 31 October 2012, the Zhambyl appeals panel annulled the previous verdict on grounds of alleged procedural errors, ordering for Mr. Kuramshin to be arrested again. Allegedly he was arrested several hours before the appeals panel pronounced its decision, and during his arrest was beaten by police officers and not shown the supporting documentation for his arrest.

Mr. Kuramshin was consequently placed in pre-trial detention in Petropavlovsk, the place of his arrest. Sources have reported that while in pre-trial detention, Mr. Kuramshin was beaten and threatened and that these threats included threats of sexual violence. Mr. Kuramshin maintained a week-long hunger strike protesting the case against him. He was later placed in solitary confinement and moved to the detention facility in Taraz, where his solitary confinement was maintained.

Consequently, an open letter was sent to President Nazarbayev and to the UN High Commissioner for Human Rights. In this letter, the jury from the court of first instance which cleared Vadim Kuramshin of extortion charges protested the decision to annul their verdict and alleged serious irregularities in the police investigation and the trial, including the removal of evidence by the police and serious grounds to doubt the truthfulness of statements made by key witnesses for the prosecution.

On 7 December 2012, Mr. Kuramshin was found guilty of extortion and sentenced to 12 years imprisonment in a penal colony under strict conditions in a renewed trial allegedly marred with irregularities. These include the following allegations:

- the presiding judge denied Mr. Kuramshin the right to appeal the annulment of his previous verdict by maintaining the date of the new trial;
- the new trial was held in the absence of Mr. Kuramshin and his defense lawyer, despite their communication in advance that it would be impossible for them to attend on that date;
- the state-appointed defense lawyer appointed to represent Mr. Kuramshin without the human rights defender's approval allegedly remained silent throughout the proceedings;
- failure to question 14 out of 22 witnesses, although the grounds for the original annulment was a failure to question all witnesses;

- the key witness on whose testimony the indictment rested was not present due to alleged illness;
- another key witness was questioned over a faulty connection.

Furthermore, sources have reported that Mr. Kuramshin's defense lawyer, Ms. Raziya Nurmasheva, who intended to appeal the verdict, was suspended from the case and denied access to Mr. Kuramshin, although to date she has not been shown written evidence of this decision. Reportedly, the judge also issued a decree to strip Ms. Nurmasheva of her license to practice law.

According to sources, an upcoming appeals hearing currently scheduled to take place on 23 January 2013 will address the three appeals motions filed, namely the appeal against Mr. Kuramshin's sentence; the appeal against his detention; and the appeal against the decree to strip Ms. Nurmasheva of her license.

Concern is expressed that the conviction of Mr. Kuramshin may be directly related to his activities defending the rights of prisoners. In light of the allegations of beatings and threats while he was in pre-trial detention, concern is expressed for the safety and physical and psychological integrity of Mr. Kuramshin. Furthermore, in light of the allegations detailed above, concern is expressed that the second trial of Mr. Kuramshin may not have adhered to international minimum standards of a fair trial. Concern is also expressed regarding allegations received that Ms. Nurmasheva, Mr. Kuramshin's defense lawyer, was suspended from the case, denied access to her client and may lose her license to practice law.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international standards that are applicable to the issues brought forth by the situation described above.

In this connection, we would like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. Kuramshin. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would further like to draw your Excellency's Government's attention to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute

suspected perpetrators of torture. We would also like to draw your Excellency's Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture".

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which your Excellency's Government ratified on 24 January 2006, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Regarding allegations concerning irregularities in Mr. Kuramshin's trial, we would like to refer your Excellency's Government to the following provisions of the International Covenant on Civil and Political Rights, which your Excellency's Government ratified on 24 Jan 2006:

- article 14(3), which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
  - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."
  - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."
- article 14(5) of the International Covenant on Civil and Political Rights, which states: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

The right to be assisted by a lawyer is also set forth in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in

particular in principle 1, which states: “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings”; and principle 5, which states: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”

Regarding allegations indicating that the situation of Mr. Kuramshin is directly related to his activities defending the rights of prisoners, we would like to refer your Excellency's Government to the fundamental principles set forth in 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, and in particular articles 1 and 2 which state that "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" and that "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".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission,

attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Regarding allegations received about the suspension of Mr. Kuramshin's defense lawyer, Ms. Raziya Nurmasheva, and the fact that she may be stripped of her license to practice law, we would also like to bring to the attention of your Excellency's Government article 9 para. 3 point c) 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, which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Kuramshin and those of his defense lawyer, Ms. Raziya Nurmasheva, in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. Please explain what steps have been taken to guarantee the safety and physical and psychological integrity of Mr. Vadim Kuramshin while in detention.
4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case, including investigations into the alleged violations of international minimum standards for a fair trial. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please explain what measures have been taken to ensure that human rights defenders in Kazakhstan are able to carry out their legitimate and peaceful activities in defense of human rights without fear of violence, judicial harassment or other restrictions.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Vadim Kuramshin are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Frank La Rue  
Special Rapporteur on the promotion and protection of the right to freedom of  
opinion and expression

Margaret Sekaggya  
Special Rapporteur on the situation of human rights defenders

-

Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers

Juan E. Méndez  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment