

Mandates of the Working Group on Arbitrary Detention; 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; and the Special Rapporteur on the independence of judges and lawyers

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TJK 5/2014:

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Dear Mr. Khamidov,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; 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; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 24/7, 25/2, 25/18, and 26/7.

In this connection, we would like to bring to the attention of your Government information we have received concerning **the prosecution and detention of Mr. Shukhrat Kudratov**.

Mr. **Shukhrat Kudratov** is a human rights lawyer, working at the news agency 'Asia-Plus' and serving as Deputy Director of the opposition Social-Democratic Party in Tajikistan. In 2011, he was named 'Human Rights Defender of The Year' in Tajikistan by the local Bureau for Human Rights and Rule of Law. He has also legally represented victims of police torture, persons accused of "religious extremism", and opposition activists.

According to the information received:

In 2013, Mr. Shukhrat Kudratov represented a prominent opposition politician who was charged with fraud and polygamy. During the trial, Mr. Kudratov and the other legal representatives reported receiving threats as a result of their legitimate work. He was also allegedly hit by a member of the Agency for State Financial Control and the Fight against Corruption in the courtroom in July 2013.

It is further claimed that he received a threat concerning his daughter in March 2014, and had the police enter his house at midnight the same day in order to check his passport.

On 11 April 2014, one of the alleged victims in the above-mentioned trial filed a civil law suit against Mr. Kudratov for “moral damage”, claiming to have been offended by him. Allegedly, the trial for “moral damage” took place in absentia; Mr. Kudratov did not receive copy of applicant’s claim, and he was denied access to the audio records relied upon as evidence of the offence. It is alleged that on 17 April 2014, Mr. Kudratov filed a complaint to the Ministry of Justice against the judge.

According to sources, on 19 June 2014, the Firdavsi District Court in Dushanbe convicted Mr. Kudratov in absentia and fined him 200,000 Tajikistan Somoni (approximately 4,000 US Dollars) for “moral damage”. It is claimed that such a large fine is unprecedented for a conviction of “moral damage”.

It is alleged that on 21 July 2014, Mr. Kudratov was arrested in his office in Dushanbe by officers of the Agency for State Financial Control and the Fight Against Corruption. Two days later, he was allegedly charged with bribery, complicity in a crime, and preparation of a crime or attempted crime, under Articles 320, 36 and 32 of the Criminal Code. Allegedly, the Firdavsi District Court ruled to hold him in pre-trial detention on the same day. The charges alleged that he had received 2,500 US Dollars on 18 July 2014 from a client for the purposes of bribing a local judge.

According to sources, on the day of Mr. Kudratov’s arrest, the State television channels reported that he had been detained with money in his possession, and claimed that he was guilty of the charges he was accused of. Allegedly, on 30 July 2014, the head of the Agency for State Financial Control and the Fight Against Corruption declared at a press conference that he believed that Mr. Kudratov was guilty and would be sentenced to between five and ten years’ imprisonment and deprived of the right to practice law.

On 21 August 2014, charges of fraud under article 247 of the Criminal Code were allegedly added against Mr. Kudratov. These new charges alleged that one of his former clients paid him a bribe of 7,000 US Dollars.

Reportedly, on 19 September 2014, the Firdavsi District Court ruled to prolong the pre-trial detention of Mr. Kudratov until 21 November 2014. It is reported that Mr. Kudratov appealed that decision on 24 September 2014.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. Concern is expressed at the prosecution and detention of Mr. Shukhrat Kudratov and that this might be related to his peaceful activities as a human rights defender exercising his rights to freedom of opinion and expression.

While we do not wish to express an opinion on whether or not the detention of Mr. Shukhrat Kudratov is arbitrary, the above allegations appear to be in contravention of the right not to be deprived arbitrarily of his liberty as set forth in article 9 of the Universal Declaration of Human Rights (UDHR) and article 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Tajikistan on 04 January 1999. The above allegations also appear to be in contravention of the Basic Principles on the Role of Lawyers, and in particular principle 16 which stipulates that lawyers shall not suffer prosecution or administrative, economic or other sanctions for any action taken in accordance with their professional duties, and principle 18 which states that lawyers shall not be identified with their clients or their clients' causes. It also appears that the civil lawsuit against Mr. Shukhrat Kudratov did not comply with the requirement of a fair and public hearing, as set forth in article 10 of the UDHR and article 14 (1) of the ICCPR.

In this regard, we would also like to draw the attention of your Government to article 19 of the ICCPR, which provides that everyone has the right to freedom of opinion and expression.

We would also like to refer to 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 6 and 9.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Government to safeguard the rights of Mr. Kudratov in compliance with international instruments.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

2. Please provide information concerning the legal grounds for the arrest and detention of Mr. Kudratov and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

3. Please indicate what measures have been taken to ensure that lawyers are able to carry out their legitimate professional duties without intimidation or improper interference, and without suffering prosecution or other sanctions.

4. Please kindly indicate what measures have been taken to ensure that human rights defenders in Tajikistan are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort, including the bringing of legal charges.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Khamidov, the assurances of our highest consideration.

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Gabriela Knäul
Special Rapporteur on the independence of judges and lawyers