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**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 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 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24)  
KAZ 2/2013

22 March 2013

Excellency,

We have the honour to address you in our capacity as 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 16/5, 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 the alleged denial of Mr. **Vadim Kuramshin**'s appeal to serve his sentence in an alternative location, as well as alleged further legal proceedings seeking to strip Ms. **Raziya Nurmasheva** of her license to practice law, and to undertake disciplinary action against Mr. **Iskander Alimbayev**.

Mr. Kuramshin is a defender of the rights of prisoners who during a decade documented and published allegations of instances of torture and other ill-treatment and harsh conditions in detention centres in North Kazakhstan province. He was arrested on 23 January 2012 on charges of extortion under Article 181 of the Criminal Code of the Republic of Kazakhstan. He was found guilty only of arbitrariness under Article 327 of the Criminal Code on 28 June 2012, and in subsequent months following his release took up his advocacy work again denouncing alleged human rights violations. On 31 October 2012, the Zhambyl appeals panel cancelled the previous verdict on the grounds of alleged procedural violations. Mr. Kuramshin was immediately taken back into custody and allegedly beaten repeatedly by police and threatened with, among other things, sexual violence. . Eventually on 7 December 2012 he was sentenced to 12 years' imprisonment and confiscation of his property, a sentence against which he lodged an appeal.

Ms. Raziya Nurmasheva and Mr. Iskander Alimbayev represented Mr. Kuramshin as his defence lawyers during the same hearing on 7 December 2012. At this hearing, an interim court ruling was issued to strip Ms. Nurmasheva of her license to practice as a lawyer and to undertake disciplinary action against Mr. Alimbayev, allegedly on grounds which included unnecessarily protracting court proceedings.

Mr. Kuramshin has been the subject of three previous urgent appeals, the most recent of which also included Ms. Nurmasheva. On 8 October 2010, an urgent appeal (no. KAZ 2/2010) was sent to your Excellency's Government in which concerns were raised regarding the arrest of Mr. Kuramshin while he tried to arrange a visit with a prisoner in his capacity as a defender of prisoners' rights, on the basis of an anonymous accusation that he was involved in drug trafficking. We would like to thank your Excellency's Government for the response dated on 21 January 2011 laying out details of the investigation, although concerns remained as to the trustworthiness of the accusation. The second urgent appeal (no. KAZ 4/2011) was sent to your Excellency's Government on 3 October 2011 concerning the arrest of Mr. Kuramshin on two occasions, and the alleged failure of the Prosecutor's Office to investigate his accusations that the proper procedures were breached during these arrests. We would like to thank your Excellency's Government for the response received dated 21 February 2012 but we regret that little information was provided therein responding to these specific allegations.

The most recent urgent appeal concerning the situation of Mr. Kuramshin (no. KAZ 1/2013), which also concerned Ms. Nurmasheva, was sent to your Excellency's Government on 15 January 2013. This appeal was sent on behalf of the Special Rapporteurs on the right to freedom of opinion and expression; the situation of human rights defenders; the independence of judges and lawyers; and torture and other cruel, inhuman and degrading punishment. The appeal detailed grave concerns regarding allegations of a spate of procedural violations that had taken place during the trial, concerns that Mr. Kuramshin may have been beaten repeatedly by police and threatened with, among other things, sexual violence while in detention, and concerns that the ruling to deprive Ms. Nurmasheva of her licence to practice law may have been arbitrary. We would like to thank your Excellency's Government for the detailed response dated 11 February 2013 where it is stated that "due to their professional activity this particular category of citizens [human rights defenders] is at higher risk of potential violation of their rights, threats against their personal life and health and that of their families and relatives, the law-enforcement authorities of Kazakhstan attach top priority to all these cases and investigation thereof is carried out within the shortest time possible and with thorough examination of all the circumstances of a case".

Also, we take note that the allegations of beatings and threats, including threats of sexual violence, during Mr. Kuramshin arrest and detention as well as the conditions of the detention were under investigation by the administration of "Facility ES 164/1" and the Internal Security Directorate of the North Kazakhstan Oblast Department of Internal Affairs on 3 and 12 November 2012 respectively.

While we would like to thank your Excellency's Government for its cooperation regarding this case, in the light of the new information received, we remain seriously concerned about the situation of Mr. Kuramshin and his defence lawyers, Ms. Nurmasheva and Mr. Alimbayev.

According to latest information received:

A sentence pronounced by the Zhambyl provincial court's appeals panel on 14 February 2013 upheld the previous decision to sentence Mr. Kuramshin to 12 years imprisonment and the confiscation of his property.

It is reported that, in response to this judgement, Mr. Kuramshin then sent an official petition to the Ministry of the Interior and the chair of the Interior's Penitentiary System Committee (KUIS) requesting that he be permitted to serve his sentence in a prison facility in the city of Taraz.

Reportedly, the fact of his activities denouncing allegations of torture and other ill-treatment and nepotism among the prison staff of penitentiary facilities in Northern Kazakhstan province, as well as the alleged beating and threats that included threats of sexual violence there during his period of detention following the 31 October 2012 decision, have provided Mr. Kuramshin with sufficient grounds to believe there would be a severe risk to his physical and psychological integrity, indeed even to his life, should he have to serve his sentence in Northern Kazakhstan province.

It is alleged that this petition has to date remained unanswered, resulting in the start of proceedings on 4 March 2013 to transfer Mr. Kuramshin to the prison facility to which he was assigned, penal colony EC 164/4 in Gorniy village, Northern Kazakhstan province. It is reported that following a stay of several days in the investigation detention facility (SIZO) in Petropavlovsk, Mr. Kuramshin is currently in penal colony EC 164/4.

On 20 March 2013 the sentence against Mr. Kuramshin was reportedly upheld again during a cassation appeal in Taraz. The presiding judge allegedly failed to consider any of the facts or procedural violations submitted by Mr. Kuramshin's lawyers.

Sources further inform that on 14 February 2013, the Zhambyl provincial court also upheld the interim ruling to strip Ms. Nurmasheva of her license, barring her from the Almaty City Advocates Collegium and the recommendation by the same presiding judge for the Republican Collegium of Lawyers to undertake disciplinary action against Mr. Alimbayev.

With regard to this decision, new reports indicate that the grounds for disciplinary action against Mr. Alimbayev and the grounds to order that Ms. Nurmasheva be stripped of her license, and consequently the decision to uphold these rulings, have been in violation of provisions contained in the UN Basic Principles on the Role of Lawyers and the subsequent Singhvi Declaration.

New allegations received indicate that:

- The charge of contempt of court may have constituted grounds for the ruling by the presiding judge, despite the fact he was an interested party in the proceedings and should not therefore make such a judgement (as stipulated in principle 88 of the Singhvi Declaration);

- A significant number of the reasons contributing to the presiding judge's conclusion that Ms. Nurmasheva and Mr. Alimbayev were needlessly delaying proceedings and displayed contempt towards the court may have been based on conjecture on the part of the judge rather than objective criteria, thus giving rise to concerns of bias;
- One of the reasons provided by the judge, namely that Ms. Nurmasheva was "dramatizing" her illness, was reportedly a judgement made in the absence of any expert advice;
- Ms. Nurmasheva was reportedly prohibited from mentioning alleged misconduct and human rights violations by law enforcement officials against Mr. Kuramshin, on the grounds that this would "cause prejudice among the jury" despite this amounting to a violation of both her and her client's rights under articles 9, 10 and 14 of the International Covenant on Civil and Political Rights, in the light of the duty of a lawyer to raise alleged human rights violations against her client in order to ensure due process is respected;
- Ms. Nurmasheva and Mr. Alimbayev may have been judged to be protracting the court proceedings by bringing in motions and requesting to examine certain pieces of evidence, despite these being essential tools for the conduct of due process;
- Ms. Nurmasheva and Mr. Alimbayev were denied access to several documents that constituted evidence as they were reportedly classified as "secret", which may have amounted to a violation of minimum standards for a fair trial.

Serious concerns are expressed concerning the situation of Mr. Kuramshin and the allegations received reiterating that it is directly linked to his human rights activities. In this connection, grave concern is expressed at the allegations that the denial of Mr. Kuramshin's request to serve his sentence in an alternative location may put his physical and psychological integrity or even his life in grave danger, in the light of the nature of his human rights activities prior to his arrest. Further concern is expressed at the decision to uphold the ruling to strip Ms. Nurmasheva of her license and the recommendation that disciplinary action be taken against Mr. Alimbayev, in the light of serious allegations that this ruling may have been based on conjecture and bias against them and/or their client on the part of the presiding judge.

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 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 Convention against Torture, and other Cruel, Inhuman and Degrading

Treatment and Punishment (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 7b of the Human Rights Council Resolution 16/23, 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".

Regarding the allegations received indicating that the situation of Mr. Kuramshin is directly linked to his human rights work, 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 9 para. 3 point c) 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.
- 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.

We would like to refer your Excellency's Government to article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which Kazakhstan is a party: "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

In this context, we would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990. In particular:

- Principle 13 (b). The duties of lawyers towards their clients shall include: (b) Assisting clients in every appropriate way, and taking legal action to protect their interests.
- Principle 14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.
- Principle 16 (a) and (c). Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (...) and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.
- Principle 17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.
- Principle 21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time. The right to have adequate time and facilities for the preparation of one's own defence is also spelled out in article 14 (3) of the ICCPR.
- Principle 27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.
- Principle 28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an

independent statutory authority, or before a court, and shall be subject to an independent judicial review.

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 the above-mentioned persons 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 provide further details of the noted two investigations as well as of any other investigation, and judicial or other inquiries, carried out in relation to the allegations of beating and threatening including threats of sexual violence during Mr. Kuramshin arrest and detention as well as the conditions of the detention. Please indicate how they were compatible with articles 7 and 12 of the CAT and paragraph 7b of the Human Rights Council Resolution 16/23, specifically with the requirements of effectiveness and impartiality.
4. In addition, please provide the details, and where available the results, of any other relevant investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. In the light of the assurances provided by your Excellency's Government in the response received on 11 February 2013, please explain what measures have been taken to ensure that this procedure was followed in the case detailed above, particularly in the case of the request by Mr. Kuramshin to serve his sentence in an alternative location of similar classification due to his fears of being at grave risk to his physical and psychological integrity otherwise. In this connection, please explain what protective measures have been taken to guarantee the physical and psychological integrity of Mr. Kuramshin while in detention, particularly in light of his transfer to penal colony EC 164/4.
6. Please explain, in the light of the serious allegations detailed above, what measures have been taken to ensure that international minimum standards for fair trial are adhered to at all times, particularly during the judicial proceedings against Mr. Kuramshin and Ms. Nurmasheva.

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 the above mentioned persons 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.

Margaret Sekaggya  
Special Rapporteur on the situation of human rights defenders

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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