

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of migrants; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA RUS 5/2017

31 August 2017

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the human rights of migrants; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 34/5, 34/21, 32/2, 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the ill-treatment and alleged imminent deportation of Uzbek national, Mr. Khudoberdi Turgunaliyevich Nurmatov (also known by his pseudonym Ali Feruz) from the Russian Federation to Uzbekistan.

According to the information received:

Mr. Khudoberdi Turgunaliyevich Nurmatov, born in February 1986, in Russia, is an Uzbek national who writes for the independent Russian newspaper Novaya Gazeta under the pseudonym Ali Feruz. Close family members are Russian nationals, and he has spent most of his life in Russia. In his capacity as a journalist, he has reported extensively on violations of human rights in Central Asia and covered human rights issues in Russia such as the rights of refugees and other migrants from Central Asia and discriminations against LGBTI people.

Mr Khudoberdi is openly gay, and homosexuality in Uzbekistan is criminalised under Article 120 of the Criminal Code of 1994, being punishable with a term of imprisonment of up to three years.

Following a brief return to Uzbekistan in 2008, the Uzbek National Security Service allegedly kidnapped Mr Nurmatov from his home, he was detained and tortured for two days in an attempt to coerce him to serve as an informant on acquaintances and friends. After his release he was forced to flee to Kyrgyzstan. He travelled from Kyrgyzstan to Kazakhstan, and later fled Kazakhstan in 2011

fearing the alleged practice of forcible return of Uzbek Muslims from Kazakhstan to Uzbekistan.

In 2011, Mr Nurmatov returned to Russia, he lost his Uzbek passport in 2012 and has not applied for another passport for fear of reprisals. He has however applied for refugee status in Russia.

On 16 March 2017, Mr. Nurmatov was detained by the police in Russia and charged with administrative offences relating to his migration status. He was released shortly after since his application for temporary asylum was still pending. Later, Mr. Nurmatov was informed that his asylum application had been refused. He filed an appeal against the decision at Zamoskvoretsky district court in Moscow. The court rejected the appeal but failed to notify Mr. Nurmatov in person.

On 1 August 2017, Mr. Nurmatov was stopped by the Russian police for ID checks and subsequently detained in Basmanniy district police station for violation of the rules of entry or stay in the Russian Federation. Mr. Nurmatov was then taken to the Basmanniy Court in Moscow for a hearing. It was at the hearing that he was informed that his asylum application had been rejected. He was also sentenced to a 5,000 rouble fine and a forced deportation to Uzbekistan. The deportation was based on his alleged “violation by a foreign citizen of the rules of entry into the Russian Federation or the rules of remaining in the Russian Federation”. It was reported, that after the deportation decision, he tried to commit suicide, which was prevented by guards.

Upon the ruling, Mr. Nurmatov was arrested in court and escorted to the deportation centre for detention of foreign citizens (SUVSIG) in Moscow. Mr. Nurmatov was allegedly beaten, insulted with homophobic remarks and subjected to electric shocks while he was being transferred from the court to the holding centre in Moscow after the deportation order was issued.

Mr. Nurmatov has filed an appeal to the court-ordered deportation. On 4 August 2017, The European Court of Human Rights has issued an extraordinary order barring the transfer of Mr. Nurmatov to Uzbekistan while appealing the asylum decision. Following this ruling, the Moscow City Court on 9 August 2017 suspended the decision of the Basmanniy Court to deport him to Uzbekistan pending review of his case by the European Court of Human Rights (ECtHR). The judge, however, also ruled that Mr Nurmatov must stay in the Special Facility for Temporary Detention of Foreign Citizens (SUVSIG) while his case is being considered by the ECtHR, which could allegedly take several months or even years.

At the time of the writing of this communication, Mr. Nurmatov continues to be held at the SUVSIG, thus remains at risk of forcible return, including abduction, to Uzbekistan while in detention.

We express grave concern at the allegations of ill-treatment of Mr. Nurmatov at the hands of Russian authorities, and his continued detention at the deportation centre while awaiting the outcome of his asylum application. We express equal concern that given the treatment he allegedly previously suffered from the Uzbek National Security Service, in addition to his human rights activities and his sexual orientation, if deported back to Uzbekistan, Mr. Nurmatov will be at imminent risk of arrest, and could face prosecution, incarceration and serious human rights violations, including torture and other Cruel Inhuman or Degrading Treatment or Punishment.

While we do not wish to prejudge the accuracy of these allegations, the treatment Mr. Nurmatov allegedly suffered at the hands of the Russian authorities during his transfer to the holding centre appear to be in contravention to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment. We would also like to underline that the decision to deport Mr. Nurmatov to Uzbekistan appears to be in contravention to the non-refoulement principle.

We would like to recall that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is codified in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which was ratified by Russia on 3 March 1987, in article 7 of the International Covenant on Civil and Political Rights, which was ratified by Russia on 16 October 1973, and in article 3 of the European Convention on Human Rights, ratified by Russia on 5 May 1998. In this connection, the Committee against Torture has emphasized that States have an obligation under the treaty to protect all persons from torture and ill-treatment, including on the grounds of sexual orientation and gender identity (CAT/C/GC/2).

We also would like to refer to article 3 of the CAT, which provides that no State shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of being subjected to torture. Furthermore paragraph 9 of the General Comment No. 20 of the Human Rights Committee, states that State parties, in order to fulfil their obligations under article 7 of the ICCPR, “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement.” This absolute prohibition against refoulement is broader than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee status under article 33 of the 1951 Refugee Convention or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee status determinations, to ensure that the fundamental right to be

free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed.

We would also like to refer to the UN Declaration on Human Rights Defenders, particularly to article 1, 2, 5 and 6 which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Legitimate exercise of these rights by human rights defenders should not be criminalized.

In 2015, the Human Rights Committee has expressed concern about reports of discrimination, harassment and violence, including by law enforcement officials, against lesbian, gay, bisexual and transgender individuals in Uzbekistan and was concerned that consensual sexual activities between adult males continue to be criminalized under article 120 of the Criminal Code (CCPR/C/UZB/CO/4, para. 7).

On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, the United Nations High Commissioner for Human Rights has emphasized that States have obligations to, inter alia, conduct prompt, thorough investigations of incidents of hate motivated violence against and torture of LGBT persons, hold perpetrators to account and provide redress to victims; ensure that no one fleeing persecution on grounds of sexual orientation or gender identity is returned to a territory where his or her life or freedom would be threatened; and that asylum laws and policies recognize that persecution on account of sexual orientation or gender identity may be a valid basis for an asylum claim (A/HRC/29/23, para. 78).

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 Excellency's Government to safeguard the rights of Mr. Nurmatov 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 on the current legal status of Mr. Nurmatov and procedures regarding his appeal.

3. Please provide information on the measures taken to protect the life, the physical and psychological integrity, and the liberty and security of Mr. Nurmatov, and in particular on the measures considered to prevent his deportation or transfer to a place where his liberty, personal security and integrity may be at risk.
4. Please provide information regarding how the proper identification of all potential protection needs and respect for international and human rights law – particularly with regard to the principle of non-refoulement – are taken into account when carrying out the repatriation of foreign nationals to Uzbekistan or other countries.
5. Please provide any information regarding any safeguards to ensure that any deportation carried out does not include forcible return to countries where Mr Nurmatov would be at risk of torture or other cruel, inhuman or degrading treatment or punishment.
6. Please provide information on measures taken to protect the life, and the physical and psychological integrity of persons under the custody of law enforcement agencies in Russia. Please provide details, and where available, the results of any investigation, medical examination, and judicial or other inquiries conducted into the allegations of Mr Nurmatov's torture during his transfer to the holding centre.
7. Please indicate what measures were taken to ensure that journalists and human rights defenders in Russia 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.

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.

In addition, we would like to draw your Excellency's Government's attention to paragraph 23 of the methods of work of the Working Group on Arbitrary Detention, according to which, "after having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals — which are of a purely humanitarian nature — in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure.

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

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Michel Forst
Special Rapporteur on the situation of human rights defenders

Felipe González Morales
Special Rapporteur on the human rights of migrants

Vitit Muntarbhorn
Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity