

Mandates of 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:
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31 May 2019

Excellency,

We have the honour to address you in our capacities as 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 35/11 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of torture and ill-treatment of Mr. **Rashitjon Hamidovich Kadirov** former Prosecutor General of Uzbekistan, currently held in the pre-trial detention facility of the Ministry of Interior in the Mirabadasky district of Tashkent.

According to the information received:

Mr. Kadirov held the position of Prosecutor General of Uzbekistan from the year 2000 to 2015. On 22 February 2018 criminal proceedings were initiated by the Office of the current Prosecutor General against Mr. Kadirov, who was arrested and held in incommunicado detention until 24 February 2018.

On 25 February 2018, he was charged with involvement in a criminal case as a defendant, accused of extortion, of taking bribes and other economic crimes, and as a result was remanded in custody. On that same day, seventeen persons associated to Mr. Kadirov were apprehended, of whom thirteen were detained for three days in solitary confinement.

On 3 March 2018, the homes of nine persons associated to Mr. Kadirov were violently searched and police dogs were employed during the search to intimidate the persons concerned.

From 5 to 10 March 2018 various persons associated to Mr. Kadirov were detained. The officers of the investigating authorities and the Prosecutor's office resorted to excessive use of force, insults and threats against them. Furthermore, partners and clients of a law firm associated to Mr. Kadirov's relative were also detained and subjected to torture and psychological pressure in order to testify against Mr. Kadirov.

The investigation of Mr. Kadirov's case reportedly lasted ten months, during which more than 40 people, including Mr. Kadirov's relatives, have been summoned to testify. Interrogations were conducted during days and nights, and suspects were deprived of sleep, they were not granted access to their lawyers, and

some were subjected to physical and psychological abuse. Law enforcement officials would have also forced Mr. Kadirov to watch a relative being subjected to physical abuse in order to coerce him into incriminating himself.

While in detention, Mr. Rashitjon Kadirov has allegedly been subjected to torture for an extended period of time, including death threats and mock executions, in order to force him to testify against himself and persons associated with him, and to make a public confession in court and on national television. Mr. Kadirov was also kept naked in solitary confinement without a bed or bedding, he was deprived of sleep for around one month. Reportedly, Mr. Kadirov's access to food, medicine, and the toilet has also been restricted, and he has been subjected to physical abuse by other inmates, allegedly under the orders of prison officials. Since his detention Mr. Kadirov's relatives have only been able to meet him once and have had no information about him since 18 March 2019. Mr. Kadirov's state-appointed lawyer has not been able to see him.

Furthermore, it is reported that while the investigation was still ongoing the President of Uzbekistan, Mr. Mirziyoyev, announced that Mr. Kadirov was guilty of receiving multimillion bribes and that he will be forced to make a televised public confession of guilt. Such a declaration could have prejudiced Mr. Kadirov's presumption of innocence and right to a fair trial, and could amount to executive interference with the judiciary.

On 7 January 2019, the trial of Mr. Kadirov and his co-defendants began behind closed doors in Yunusabad District Criminal Court. During court proceedings the defence team of Mr Kadirov was subjected to unlawful restrictions on executing their professional duties, and was threatened with the revocation of their lawyer's licenses; they were forced to sign non-disclosure agreements; and were warned that they will be held criminally liable under Article 239 "Disclosure of Inquiry or Preliminary Investigation Data" of the Criminal Code of Uzbekistan.

Additionally, the presiding judge was presented with allegations of torture of defendants and witnesses during the investigation, but refused to accept numerous motions urging to conduct independent judicial review and criminal investigation into such torture claims. It is alleged that serious pressure has been exerted by state authorities on the judiciary in this case.

In April 2019, the Office of the General Prosecutor of Uzbekistan posted on its website a statement informing the public about that status of the case of Mr. Kadirov, and guaranteeing to provide all necessary measures to ensure the rights and freedoms of citizens involved in this criminal cases. Moreover, the Office of the General Prosecutor informed the public that from the beginning of the investigation, Mr. Kadirov was granted the right to defence, his health condition was constantly supervised and that forensic medical examination had confirmed that there were no imminent health risks that would prevent Mr. Kadirov from staying in remand custody prior to the trial and assured that no bodily injuries were found on him after he had been medically examined.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our grave concern regarding the treatment that Mr. Kadirov is alleged to have been subjected to since his arrest, which if confirmed, would constitute violations of his human right to be free from torture and other ill-treatment, and his rights to liberty, security, due process and equality before the law in contravention to articles 7, 9, 14 of the of the International Covenant on Civil and Political Rights (ICCPR) and articles 2, 15 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Both treaties have been acceded to by Uzbekistan on 28 September 1995.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 the details, and where available the results, of any investigation, medical examination, and judicial or other inquiries carried out into the allegations that Mr. Kadirov was subject to several ill-treatment, and possibly torture, while in detention. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is consistent with Uzbekistan's obligations under the human rights Conventions it has ratified
3. In the event that the allegations of ill-treatment and torture are confirmed, and the perpetrators identified, including those with direct and supervisory responsibility, please provide the full details of any prosecution which may have been undertaken. Have penal, disciplinary or administrative sanctions been imposed to the alleged perpetrators?
4. Please indicate measure taken to prevent and investigate and punish reports of violence among prisoners
5. Please indicate any remedial action taken vis à vis the victim and/or his family.
6. Please indicate the measures taken by the state and the judicial authorities to ensure that any statement which is established to have been made as a result of torture is not invoked as evidence in any proceedings
7. Please indicate the measures taken to ensure that relatives and persons associated to Mr. Kadirov are protected from reprisals for speaking out about the alleged treatment

8. Please provide information on the measures that your Excellency's Government has taken, or intends to take, to ensure the independence of the legal profession and to enable lawyers to perform their professional functions freely and without any intimidation, threat, harassment or improper interference.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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(s) responsible for the alleged violations.

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

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

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

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw attention of your Excellency's Government to the applicable international human rights norms and standards.

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), as well as article 7 of the International Covenant on Civil and Political Rights (ICCPR), both of which your Excellency's government ratified acceded to on 28 September 1995. Article 12 of CAT, further 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 requires State parties to prosecute suspected perpetrators of torture. Additionally, Article 15 of the CAT, prohibits the use of information obtained under torture as evidence in any proceedings. The Committee Against Torture (CAT) has stressed that States have a heightened obligation to protect persons vulnerable to discrimination, as such individuals are generally more at risk of experiencing torture and ill-treatment (see CAT/C/GC/2, paras. 15, 17 and 18).

Likewise, article 10(1) of the ICCPR establishes that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The Human Rights Committee in General Comment No. 21 has explained that this provision applies to anyone deprived of their liberty under the laws and authority of the State, including in prisons, hospitals, psychiatric institutions, or elsewhere, without discrimination. It has also recalled that this provision supplements the ban on torture and other cruel, inhuman or degrading treatment or punishment established in article 7 of the ICCPR (paras. 2-3).

Furthermore, we would like to draw your Excellency's Government's attention to Paragraph 8a of Human Rights Council Resolution 16/23 reminds States that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture;" in addition to the recommendation E/CN.4/2003/68, para. 26 (j) of the previous Special Rapporteur on torture which states "countries should take effective measures to prevent prisoner-on-prisoner violence by investigating reports of such violence, prosecuting and punishing those responsible, and offering protective custody to vulnerable individuals."

We would also like to draw the attention of your Excellency's Government to the United Nations Standard Minimum Rules for the Treatment of Prisoners 2015 (the Mandela Rules). In particular, Rule 43 that prohibits, in all circumstances, disciplinary sanctions that amount to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment. Rule 22 also states that every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value

adequate for health and strength, of wholesome quality, well prepared, and served, and that drinking water shall be available to every prisoner whenever he or she needs.

We would like to draw the attention of your Excellency's Government to paragraph 27 of General Assembly Resolution 68/156 (February 2014), which, "[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished"

Additionally, we would like to also bring to the attention of your Excellency's Government reports of my predecessor the previous Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment that find that solitary confinement is a harsh measure which may cause serious psychological and physiological adverse effects on individuals regardless of their specific conditions (A/66/268, para. 79).

We would like to refer to the Recommendation E/CN.4/2003/68, para. 26 (j) of the previous Special Rapporteur on torture which states "countries should take effective measures to prevent prisoner-on-prisoner violence by investigating reports of such violence, prosecuting and punishing those responsible, and offering protective custody to vulnerable individuals, without marginalizing them from the prison population more than is required by the need for protection and without putting them at further risk of ill-treatment. Training programmes should be considered to sensitize prison officials to the importance of taking effective steps to prevent and remedy prisoner-on-prisoner abuse and to provide them with the means to do so. In accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, prisoners should be segregated according to gender, age and seriousness of the crime, alleged/committed; first-time prisoners should be segregated from repeat offenders and pre-trial detainees from convicted prisoners" (E/CN.4/2003/68, para. 26 (j)).

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14(3)(b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. S/he should also be able "to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter" (CCPR/C/GC/32, para. 34).

We would also like to refer your Excellency's Government to the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990.

Principle 13 provides that the duties of lawyers towards their clients include advising clients as to their legal rights and obligations, and assisting clients in every appropriate way, including taking legal action to protect their interests. Principle 16

requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. Principle 17 states that where the security of lawyers is threatened as a result of discharging their functions, the authorities are responsible for their adequate safeguard. Finally, Principle 18 affirms that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.