

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
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24 January 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/19 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Ms. Zhanara Akhmetova, a journalist and one of the leaders of the opposition movement, "Democratic Choice of Kazakhstan" who is at imminent risk of being extradited from Ukraine to Kazakhstan where it is alleged that she may be persecuted and subjected to torture and/or other ill-treatment. She appealed a decision rejecting her application for asylum and a hearing was held on 14 January 2020. The decision is expected on 28 January 2020. In light of the information received we urge your Excellency's Government not to extradite Ms. Akhmetova.

The Special Rapporteur on the situation of human rights defenders, in his report A/HRC/40/60 on the situation of women human rights defenders, makes mention of Ms. Akhmetova to demonstrate the vulnerability to extradition requests from home states when women defenders are seeking asylum.

According to the information received:

In 2009, a Kazakhstani court sentenced Ms. Akhmetova to 7 years imprisonment on charges of fraud. The execution of the court sentence was deferred until her child turns 14 years old (i.e. until 2021). Ms. Akhmetova began to actively engage in journalism and opposition activities, after which the Kazakhstani authorities are alleged to have begun exerting pressure on her. In 2017, with no legal grounds, the authorities cancelled the deferment of the execution of the court sentence. In March 2017, Ms. Akhmetova with her 9-year old son went to Ukraine and requested political asylum.

In October 2017, Ms. Akhmetova was arrested in Ukraine based on an extradition request from Kazakhstan. However, in November 2017, the court released her from custody. The trial allegedly revealed facts that could indicate cooperation between the Ukrainian and Kazakhstani special services for the purpose of extraditing Ms. Akhmetova.

On 18 October 2017, the Migration Service of Ukraine refused to grant her refugee status, arguing the non-political character of her persecution. However, on 31 July 2018, the Kyiv Appellate Court ordered that the Migration Service reconsider Ms. Akhmetova's application, taking into account her opposition activism and journalistic activity. Although the Supreme Court of Ukraine confirmed this decision on 17 September 2018, the Migration Service denied Ms. Akhmetova's application for asylum on two further occasions.

Ms. Akhmetova again appealed to the court, but on 19 September 2019, the Kyiv Administrative Court rejected her complaint. The court reckoned that Ms. Akhmetova is being prosecuted on non-political charges of fraud, and not due to her activities as a journalist and as one of the leaders of the DCK opposition movement, recognised in Kazakhstan as "extremist".

On 14 January 2020, Ms. Akhmetova further appealed the decision. The hearing that took place in the Sixth Administrative Court of Appeal in Kyiv, was the last one on the case of her asylum in Ukraine, exhausting the appeal process. The decision of the court will reportedly take place on 28 January 2020. Importantly, the representatives sent to the hearing by the Migration Service of Ukraine did not hold the appropriate qualification to take the floor in Court, and as a result, the rationale of Migration Services for rejecting the application was not revealed.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned that, by dismissing the appeal applications of Ms. Akhmetova, an extradition procedure will commence. Should this lead to the arrest of Ms. Akhmetova and her return to Kazakhstan, we express our serious concern that she will be tried and sentenced for what appears to be trumped-up charges of fraud, which seem to be a direct result of her work defending human rights. In this instance, we wish to express grave concern that her son would be left without care in Kazakhstan and she would be at risk of being detained and subjected to torture and/or other forms of ill-treatment in light of the report by the Special Rapporteur on Torture, A/HRC/13/39/Add.3, wherein it confirms that women in detention in Kazakhstan, "are subjected to beatings and other forms of violence, including hooding and electroshock by law enforcement agents". Furthermore the report also highlights allegations of, "threats against women accused of crimes, targeting in particular, their children" as such our concerns are heightened. Such a return could also be in violation of the principle of non-refoulement as outlined in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, acceded to by Ukraine on 10 June 2002 and 4 April 2002 respectively.

The prohibition of a return to a place where individuals are at risk of torture and other ill-treatment is enshrined in article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Your Excellency's Government on 24 February 1987. This article provides that "[n]o State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture"; and that, "[f]or the purpose of determining whether there are such grounds, the

competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”. This absolute prohibition against refoulement is stronger than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under article 33 of the 1951 Refugee Convention or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee or asylum status determinations, so as to ensure that the fundamental right to be protected against torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed.

Further, paragraph 9 of the General Comment No. 20 of the Human Rights Committee, states that State parties “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”.

We would also 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1, 2, 11 and 12(2) of the Declaration.

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 the above-mentioned person 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 risk assessment carried out by Ukrainian authorities to ascertain whether Ms. Akhmetova is at risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment, if she is extradited and how this decision is compatible with the international standards mentioned above.
3. Please indicate which concrete measures are being taken by your Excellency’s Government to fulfil its obligations under the principle of non-refoulement.

4. Please provide information as to steps taken by the Government in Ukraine to support, promote and protect the right of human rights defenders to carry out their legitimate activities in a peaceful manner, including women human rights defenders, and to guarantee that they can conduct their work in a safe and enabling environment without fear of intimidation, harassment or reprisal whatsoever.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which our concerns are based appears to be sufficiently credible and indicate a matter warranting immediate attention. We also believe that should Ms. Ahmetova be extradited to Kazakhstan in the absence of a thorough assessment of the risks involved, the wider public should be alerted to its potential human rights implications for political asylum in Ukraine. Any expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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.

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

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

Michel Forst
Special Rapporteur on the situation of human rights defenders