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Asylum-seeker returned from Russia to Uzbekistan in blatant violation of international law

On 1 July 2016, Olim Ochilov, a 27-year-old Uzbekistani asylum seeker, was forcibly returned from Russia to Uzbekistan in blatant disregard of interim measures by the European Court of Human Rights (the European Court). On 28 June 2016, the European Court issued Rule 39 interim measures on Olim Ochilov's case to stop his forcible return to Uzbekistan, where he is at the real risk of torture.¹

Olim Ochilov came from Uzbekistan to Russia as a labour migrant in July 2012. Two years later, on 24 November 2014, Moscow Regional Court sentenced him to three years in prison for his alleged involvement in extremist activities in Russia.² Olim Ochilov served his sentence in a prison colony in Arhangelsk Region in north-western Russia, more than 1,200 km away from Moscow.

On 2 October 2015, while Olim Ochilov was serving his sentence, the Russian Ministry of Justice declared his stay in Russia "undesirable".³ Olim Ochilov was notified of the Ministry of Justice instruction and that he would need to leave Russia upon his release from the penal colony.

On 16 May 2016, the Russian Federal Migration Service (FMS) ordered Olim Ochilov's deportation on the basis of the decision by the Ministry of Justice. On 26 May 2016, Olim Ochilov appealed against the deportation order to the Ministry of Internal Affairs, but he hasn't received a response to date. Olim Ochilov had earlier applied for refugee status, but his application was denied.⁴

¹ The European Court indicates interim measures under Rule 39 of the Rules of the Court. In cases of extradition or deportation, the Court can instruct the state concerned to stay the removal of an individual pending the Court's proceedings to avoid irreparable damage.

² Olim Ochilov was found guilty of violating Article 282.2 "Organizing the activity of an extremist community", Article 327 "Forgery, manufacture, or sale of falsified documents, government awards, stamps, seals, and forms" (part 3: "Use of a knowingly forged document"), Article 30 "Preparations for a crime, and attempted crimes", and Article 322 "Illegal crossing of the state border of the Russian Federation" of the Criminal Code of the Russian Federation.

³ A competent Russian authority may issue a decision that a foreign national's presence on Russian territory is undesirable (the "exclusion order"). Such a decision may be issued if a foreign national is unlawfully residing on Russian territory or if his or her residence is lawful but creates a real threat to, in particular, public order or health. If such a decision has been taken, the foreign national has to leave Russia or will otherwise be deported.

⁴ On 13 May 2016 Olim Ochilov applied for refugee status with the Department of the Federal Migration Service for Arkhangelsk region (the UFMS) on the grounds that he faced the real risk of torture if returned to Uzbekistan. On 26 May 2016 Olim Ochilov was interviewed by UFMS officers and the following day his application was denied due to his criminal conviction, which purportedly precluded him from getting a refugee status.

Olim Ochilov managed to contact refugee lawyers in Moscow from the penal colony because he feared a possible forcible return to Uzbekistan, where he would be at real risk of torture and other ill-treatment. His lawyers appealed to the European Court for interim measures and, on 28 June 2016, the European Court issued an order for interim measures to stop Olim Ochilov being forcibly returned to Uzbekistan.

On 30 June 2016, his scheduled release date, Olim Ochilov was lead out of the penal colony by Russian law enforcement officers and transferred to the airport in Arhangelsk in order to be deported to Uzbekistan via Moscow. On the same day, Olim Ochilov's legal representatives informed the Russian authorities that the European Court had issued interim measures.

However, the Russian authorities ignored the European Court's decision, in direct violation of their legal obligations. In a letter that Olim Ochilov's Russian lawyers received in response to the notification about the ECtHR Rule 39 interim measures, the police wrote that they could not prevent his deportation because by the time the details of his flight had been "clarified" and by the time police had arrived at the departure gate "the plane's doors had been locked in preparation for take-off". They further explained that Olim Ochilov had checked in on an "Uzbekistan Airways" flight to Urgench, western Uzbekistan, on 1 July and boarded the plane of his own accord before they could intervene.

Olim Ochilov's whereabouts in Uzbekistan are currently unknown. The Uzbekistani authorities have accused him of "anti-state activities", which puts him at a particular risk of torture and other ill-treatment, as well as unfair trial, in Uzbekistan.

Prosecution for "anti-state activities" in Uzbekistan

On 13 June 2013 the Uzbekistani authorities accused Olim Ochilov of "anti-state activities" and alleged that he had participated in the activities of the so-called Islamic Movement of Turkestan.⁵ They claimed that he had been involved in such activities since his arrival in Russia in 2012. The same day, he was put on a wanted list. According to the Uzbekistani authorities, Olim Ochilov called for the "overthrow of the constitutional order" in Uzbekistan, publicly criticised the current Uzbekistani government, distributed extremist literature banned in Uzbekistan, gave speeches in Russia to other labour migrants from Uzbekistan calling on them to travel to special "subversive-terrorist training camps" in order to undergo military training.

Olim Ochilov was declared a criminal suspect under articles Article 155 "Terrorism"; Article 159 "Attempts to overthrow the constitutional order of the Republic of Uzbekistan"; Article 223 "Illegal exit from or entry in Republic of Uzbekistan"; Article 244-1 "Production and dissemination of materials containing a threat to public security and public order"; Article 244-2 "Establishment, direction of or participation in religious extremist, separatist, fundamentalist or other banned organizations" of the Criminal Code of Uzbekistan.

On 15 June 2013, the Karshi city Criminal Court in southern Uzbekistan sanctioned his arrest.

Background information

Hundreds of asylum-seekers, refugees and labour migrants have been abducted or forcibly returned from Russia to Uzbekistan since 2014 in blatant violation of Russia's international human rights obligations. The absolute ban on torture and other ill-treatment includes the

⁵ The IMU (also known as the Islamic Movement of Turkestan) is an Islamist opposition group which advocates the establishment of a Caliphate or Islamic state. It is classified as a terrorist group by the UN.

prohibition against returning or transferring a person to any country where he or she is at real risk of such abuse. Russia is a state party to several treaties that prohibit such transfers, but has flagrantly and consistently flouted its human rights commitments by sending people back to Uzbekistan where they have subsequently suffered appalling physical and psychological harm at the hands of state authorities and their agents.

Russia's deportation of "undesirable aliens"

According to NGOs and lawyers working in Russia, the majority of labour migrants and asylum-seekers declared "undesirable aliens" are unable to submit written appeals if they are not represented by a lawyer. Even in those rare cases when they do submit an appeal their deportation is not automatically stopped and law enforcement officials may carry out a deportation or expulsion order at any time unless a court in Russia has ruled to stay the deportation.

In March 2016, the European Court of Human Rights ruled that Abdukhafiz Kholmurodov, an asylum seeker from Uzbekistan, would face a real risk of torture under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms if returned to Uzbekistan.⁶ The Court also found that the Russian authorities had failed to effectively examine his claims and risk of torture under administrative deportation procedures, and had not offered any effective safeguards as required under Article 13 of the European Convention.

On 25 March 2015, the appeal court in Kostroma upheld the sentence of the court of first instance, allowing for the administrative deportation of Abdukhafiz Kholmurodov who had been declared an "undesirable alien" and issued with an "exclusion order". The appeal court stated that under Russian law courts were not obliged to take into consideration judgments by the European Court on a real risk of torture upon return to Uzbekistan or reports by international organizations on the human rights situation in Uzbekistan when deciding on an administrative deportation case. Abdukhafiz Kholmurodov's expulsion was only stopped by the European Court issuing interim measures.

Torture in Uzbekistan

Torture and other ill-treatment have long been defining features of the Uzbekistani criminal justice system. Amnesty International's April 2015 report *Secrets and lies: Forced confessions under torture in Uzbekistan* concluded that the use of torture was pervasive in Uzbekistan – and central to how the Uzbekistani authorities deal with dissent, combat actual or perceived threats to national security, and repress political opponents.⁷ Torture and the threat of torture are used routinely to obtain forced confessions, punish detainees, prisoners and their relatives, incriminate others, or extort money.

The Uzbekistani authorities have continued to vigorously reject allegations of torture and other ill-treatment by security forces and prison staff. Yet judges have continued to rely heavily on confessions obtained under torture, hand down convictions based on such forced confessions, and ignore or dismiss as unfounded defendants' complaints of torture or other ill-treatment, even when presented with credible evidence. Local authorities and security forces have also continued

⁶ See *Kholmurodov v Russia* (Application No 58923/14), European Court of Human Rights (2016) available at [http://hudoc.echr.coe.int/eng#{"itemid":\["001-161405"\]}](http://hudoc.echr.coe.int/eng#{)

⁷ Amnesty International, *Secrets and Lies: Forced confessions under torture in Uzbekistan*, 15 April 2015, Index number: EUR 62/1086/2015, available at <https://www.amnesty.org/en/documents/eur62/1086/2015/en/>.

to persecute families as a means of exerting pressure on them to disclose an alleged suspect's whereabouts, or to coerce suspects into handing themselves in to the police, signing a "confession", incriminating others, retracting a complaint or paying a bribe.

Further information

Amnesty International, *Fast-track to torture: Abductions and forcible returns from Russian to Uzbekistan*, 21 April 2016, Index number: EUR 62/3740/2016 available at <https://www.amnesty.org/en/documents/eur62/3740/2016/en/>

Amnesty International, *Secrets and lies: Forced confessions under torture in Uzbekistan*, 15 April 2015, Index number: EUR 62/1086/2015, available at <https://www.amnesty.org/en/documents/eur62/1086/2015/en/>