

Reference: B1806
Index: EUR 62/5839/2017

Ms Geneviève Mayer

Head of the Department for the Execution of Judgments
Human Rights Directorate
Council of Europe
F-67075 Strasbourg Cedex

23 February 2017

Dear Ms Mayer,

AMNESTY INTERNATIONAL'S SUBMISSION TO THE COUNCIL OF EUROPE COMMITTEE OF MINISTERS: GARABAYEV v. RUSSIAN FEDERATION (No.38411/02) GROUP OF CASES

Please find enclosed a briefing submitted in accordance with Rule 9 (2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements with a view to assisting the Committee of Ministers in its evaluation of the measures taken to date by the Russian Government to fulfil its obligations to implement the European Court of Human Rights' judgments in the Garabayev group of cases against the Russian Federation.

This submission summarizes and updates the annexed report by Amnesty International *Fast-Track to Torture: Abductions and Forcible Returns from Russia to Uzbekistan* published in April 2016. It focuses on the most pressing issues of concern to the organization, also reflected in the decision on individual and general measures adopted by the Committee at its 1250th meeting (8-10 March 2016):

1. Continuing abductions and forced returns
2. Lack of effective investigations into abductions and forcible returns
3. Reliance on diplomatic assurances
4. Compulsory deportation of "undesirable aliens" for administrative offences

Given the seriousness of these long-standing concerns, including evidence of continuing abductions and forcible returns of individuals from Russia to Uzbekistan, where they are at real risk of torture or other ill-treatment, Amnesty International urges the Committee of Ministers to use its available tools to ensure that Russia puts an end to such serious violations of the European Convention on Human Rights.

Yours sincerely,



Ivorna McGowan
Head of European Institutions Office and Advocacy Director

Amnesty International European Institutions Office

AMNESTY INTERNATIONAL'S SUBMISSION TO THE COUNCIL OF EUROPE COMMITTEE OF MINISTERS: GARABAYEV v. RUSSIAN FEDERATION (No.38411/02) GROUP OF CASES

23 February 2017

This briefing is submitted in accordance with Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements adopted by the Committee of Ministers on 10 May 2006.

In advance of the 1280th (Human Rights) meeting of Ministers' Deputies on the execution of judgments in the Garabayev Group of cases, Amnesty International seeks to assist the Committee of Ministers in its evaluation of the measures that the Russian Government has taken to date to comply with the judgments of the European Court of Human Rights in the Garabayev group of cases against the Russian Federation.

Amnesty International would like to share with the Committee of Ministers concerns about continuing forcible returns and abductions of Uzbekistani nationals from the Russian Federation to Uzbekistan. Such practices are in violation of the Russian Federation's obligations under the European Convention on Human Rights and Fundamental Freedoms, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the UN 1951 Convention Relating to the Status of Refugees.

This submission summarizes and updates the annexed briefing by Amnesty International *Fast-Track to Torture: Abductions and Forcible Returns from Russia to Uzbekistan*¹, published in April 2016. It follows an earlier submission by Amnesty International from 2013² and focuses on the most pressing issues of concern to the organization in relation to the decision adopted by the Committee of Ministers at its 1250th meeting (8-10 March 2016):

1. Continuing abductions and forced returns
2. Lack of effective investigations into abductions and forcible returns
3. Reliance on diplomatic assurances
4. Compulsory deportation of "undesirable aliens" for administrative offences

Amnesty International's research for the above publication has found that 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. Short of resorting to complicity in the abduction of individuals, the Russian authorities have sought other ways to circumvent their international obligations and have used administrative means, such as deportations for administrative offences, to return individuals to Uzbekistan where they face a real risk of torture. The numbers of those forcibly returned to Uzbekistan via administrative means are in their hundreds. Many of them have tried to apply unsuccessfully for asylum with the Russian authorities. The Russian authorities have continued to accept at face value assurances from their Uzbekistani counterparts that individuals will not be tortured upon return to Uzbekistan, and have failed to conduct effective investigations into any of the cases of abductions of Uzbekistani nationals in Russia that have been raised with them.

In assessing the risk upon return and carrying out returns to Uzbekistan, the authorities in the Russian Federation appear to prioritise bilateral agreements with Uzbekistan and regional co-operation and mutual assistance agreements designed to

¹Amnesty International, *Fast-Track to Torture, Abductions and Forcible Returns from Russia to Uzbekistan*, Index: EUR 62/3740/2016, 21 April 2016, available at <https://www.amnesty.org/en/documents/eur62/3740/2016/en/>.

²Amnesty International submission to the Committee of Ministers, 27/08/2013, available at: [http://hudoc.exec.coe.int/ENG#{"fulltext":\["garabayev"\],"sort":\["EXECPublishedDate Descending"\],"EXECDocumentTypeCollection":\["ngo"\],"EXECIdentifier":\["DH-DD\(2013\)917E"\]](http://hudoc.exec.coe.int/ENG#{)

ensure national and regional security and combat terrorism over their international human rights obligations.³ However, compliance with such treaties cannot be used as an excuse for ignoring the Russian Federation's obligations under international and regional human rights treaties. A 2015 letter from Russia's Federal Migration Service (FMS) to an Uzbekistani asylum-seeker spells out the role that good relations and mutual interests play when Russian authorities are faced with assessing the risk of torture upon return to Uzbekistan. In the section on the human rights situation in Uzbekistan, the FMS explained that "specialized international NGOs and independent experts generally conclude that Uzbekistan is a state where human rights are not respected. Taking into account the character of the relations between Russia and Uzbekistan as allies and partners the Russian Ministry of Foreign Affairs abstains from criticizing the human rights situation in this country." The FMS goes on to conclude that in Uzbekistan: "as a matter of fact the authorities and the people have reached an unspoken consensus by which the repression of civil and political rights is seen as the necessary price to pay for the provision of internal political stability, national security and a minimum of socio-economic benefits."⁴

In October 2016, Amnesty International received a letter from the National Human Rights Centre of the Republic of Uzbekistan⁵ providing their comments on the *Fast-Track to Torture* briefing and giving information on the cases raised in the document, including of the individuals forcibly returned from Russia. The letter was the first official written response in several years that the Uzbekistani authorities addressed to Amnesty International's International Secretariat, despite repeated attempts by the organization to establish a constructive dialogue with the Uzbekistani authorities. While Amnesty International welcomes this new willingness of the Uzbekistani authorities to engage with the concerns raised in the document, the organization regrets that the Uzbekistani authorities have categorically denied all Amnesty International's findings and have suggested that the briefing and earlier reports were "clearly designed as a means of disinformation", and that the briefing was "politically motivated to put undue pressure on the independent state of Uzbekistan".

1. ABDUCTIONS AND FORCIBLE RETURNS

In its decision adopted at its 1250th meeting (8-10 March 2016), the Committee of Ministers "invited the [Russian] authorities to continue the practice of apprising individuals of their right to apply for State protection in case of a perceived risk of irregular removal..."⁶. Amnesty International is concerned that this practice is not being effectively and systematically implemented.

In at least three recent cases of abduction and forcible return from Russia to Uzbekistan that have come to the organization's attention since March 2015 (Davron Komoliddinov in March 2015, Sarvar Mardiev in March 2016 and Olim Ochilov in July 2016), the individuals were not apprised of their right to apply for State protection, even though they or their legal representatives and human rights organisations had expressed a "perceived risk of irregular removal".

In the case of asylum seeker Sarvar Mardiev, for example, officers of the Russian Federal Security Service (FSB) apprehended him on 4 March 2016 as he was released from prison in Russia and drove him away. His whereabouts were undisclosed until October 2016, when the Uzbekistan authorities confirmed that Sarvar Mardiev was detained in Kashkadaria a day after his release from prison in Russia. They said he was in pre-trial detention charged with crimes

³ Agreements such as those in the context of the Shanghai Co-operation Organisation (SCO) (the 2001 Shanghai Convention on Combating Terrorism, Separatism and Extremism) and CIS agreements, such as the 1993 CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk Convention) to which the Russian Federation is a state party, contain virtually no human rights provisions and safeguards for individuals facing extradition. In particular, these instruments do not provide for internationally recognised principles of refugee protection, including the principle of *non-refoulement*, and the absolute prohibition of torture under international law.

⁴ Letter on file with Amnesty International. The FMS rejected the asylum-seeker's request for temporary asylum despite convincing evidence that he was at risk of torture if returned to Uzbekistan.

⁵ The National Human Rights Centre, along with the Ombudsman for Human Rights, are the two official institutional structures in Uzbekistan mandated with the promotion and protection of human rights.

⁶ 1250 meeting - 8-10 March 2016 - Decision case H46-18 Garabayev group v. Russian Federation / 38411/02 available at: [http://hudoc.exec.coe.int/ENG#{"fulltext":\["garabayev"\],"sort":\["EXECPublishedDate Descending"\],"EXECDocumentTypeCollection":\["CMDEC"\],"EXECIdentifier":\["CM/Del/Dec\(2016\)1250/H46-18"\]}](http://hudoc.exec.coe.int/ENG#{)

against the state. He was not granted access to a lawyer for a month. Sarvar Mardiev had requested that a human rights defender meet him at the prison gates because he was afraid that the Uzbekistani National Security Service might attempt to abduct him. But Russian FSB officers were already waiting for Sarvar Mardiev inside the prison. He was not apprised of his right to apply for State protection.

In at least one of these three cases, the Russian authorities blatantly ignored rulings by the European Court of Human Rights by colluding in the return of the applicant to Uzbekistan.

Olim Ochilov, a 27-year-old Uzbekistani asylum seeker, was forcibly returned from Russia to Uzbekistan on 1 July 2016 despite interim measures by the European Court of Human Rights issued on 28 June 2016. Olim Ochilov's lawyers informed the relevant Russian authorities on 30 June that the European Court had issued interim measures. However, the Russian authorities ignored the European Court's decision and proceeded with the forcible return of Olim Ochilov on 1 July in direct violation of their legal obligations. At no point had he been apprised of his right to apply for State protection.

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. On 2 October 2015, while Olim Ochilov was serving his sentence, the Russian Ministry of Justice declared his stay in Russia "undesirable". 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 no response has been received to date. Olim Ochilov had earlier applied for refugee status, but his application was denied.

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. 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 Arkhangelsk from where he was deported to Uzbekistan. His Russian lawyers have not succeeded in establishing his whereabouts in Uzbekistan.⁷

2. INVESTIGATIONS INTO ABDUCTIONS AND FORCIBLE RETURNS

In its last decision on the Garabayev Group of cases the Committee of Ministers also urged the Russian authorities to "pursue their efforts to conduct effective investigations into disappearances and forced transfers".⁸ The Committee "expressed grave concern that, in none of the cases where the applicants reappeared in the requesting States, the investigation ha[d] either established a convincing account of the events consonant with the Court's findings or identified those responsible for their irregular transfer".

Amnesty International shares the Committee's grave concern and supports its call to the Russian authorities.

Lawyers representing disappeared and returned Uzbekistani citizens told Amnesty International throughout 2016 that the Russian authorities had not conducted any effective investigations into any of the cases of abductions that had been raised with them. Where investigations have been carried out, prosecutors and investigators – and the Ministry of Foreign Affairs – have been willing to accept at face value official explanations from their Uzbekistani counterparts as to the circumstances

⁷ For more information see Amnesty International, *Asylum-seeker returned from Russia to Uzbekistan in blatant violation of international law*, Index: EUR 62/4488/2016, 19 July 2016. See also *Fast-Track to Torture, Abductions and Forcible Returns from Russia to Uzbekistan*, 2.1 "Rendition to Torture", page 10, for information on the forcible return of Uzbekistani labour migrant Davron Komoliddinov in March 2015.

⁸ 1250 meeting - 8-10 March 2016 - Decision case H46-18 Garabayev group v. Russian Federation / 38411/02 available at: [http://hudoc.exec.coe.int/ENG#{"fulltext":\["garabayev"\],"sort":\["EXECPublishedDate Descending"\],"EXECDocumentTypeCollection":\["CMDEC"\],"EXECIdentifier":\["CM/Del/Dec\(2016\)1250/H46-18"\]}](http://hudoc.exec.coe.int/ENG#{)

of the return of an individual sought for extradition despite often compelling evidence that the individual had been abducted or forcibly returned with the tacit or explicit acquiescence of the Russian authorities.

In the case of the Uzbekistani film producer and businessman Mirsobir Khamidkariev, for example, the Russian authorities accepted the official version provided by their Uzbekistani counterparts that he had travelled voluntarily to Uzbekistan in June 2014 to visit his mother, who was ill, but that he had not wanted to tell anyone because of the criminal charges outstanding against him in Uzbekistan. That this version was based on a “confession” from Mirsobir Khamidkariev obtained after his return to Tashkent did not appear to raise any concerns with the Russian authorities, nor apparently did the fact that his abduction had been officially registered with police in Moscow and that they had subsequently launched an official investigation into his kidnapping, based on CCTV footage from the scene of his abduction. Nor did the fact that his Russian lawyer reported that Mirsobir Khamidkariev was tortured in Uzbekistan to force him to confess raise any questions. The Russian authorities also did not question the assertion by their Uzbekistani counterparts that Mirsobir Khamidkariev had travelled some 2,000km overland from Moscow to Tashkent, crossing several state borders, without having in his possession his passport or other travel documents.

Following its examination of Mirsobir Khamidkariev’s application, the European Court of Human Rights held in its judgment of 26 January 2017 that there had been violations of Article 3 of the European Convention on Human Rights in its substantive and its procedural aspects.⁹ The Court found that the investigation by the Russian authorities “was neither thorough nor sufficiently comprehensive...” The Court also held that “the respondent State failed to comply with its duty under Article 38 of the Convention to furnish all the necessary facilities for an effective examination of the application by the Court.”

Significantly, the Court found that the Russian authorities “failed persuasively to refute [Mirsobir Khamidkariev’s] allegations ... that he had been abducted and transferred to Uzbekistan with the direct or indirect involvement of the Russian authorities”. The Court consequently concluded that “the Russian authorities bear responsibility, as a result of direct or indirect involvement, for the applicant’s forcible transfer from Moscow to Tashkent” and that “the respondent State must therefore be held accountable for the applicant’s disappearance.”¹⁰

3. RELIANCE ON DIPLOMATIC ASSURANCES

In its March 2016 decision on individual measures as regards the special protection of applicants removed to Tajikistan and Uzbekistan the Committee of Ministers reminded the Russian authorities that “the information received from the detaining authorities cannot be considered sufficient proof that the conditions of detention ... do not involve treatment in breach of Article 3”. The Committee “insisted again that the Russian authorities use all available means to obtain regular access, for monitoring purposes, to the detained applicants...”¹¹

Amnesty International strongly supports this repeated call to the Russian authorities. Information received by the organization from diplomatic sources suggests that in practice the Uzbekistani authorities are reluctant to grant diplomats – including from countries such as Russia, Kazakhstan and South Korea with which Uzbekistan enjoys friendly relations – access to detention centres to visit jailed foreign nationals or individuals who have been returned to Uzbekistan. In some cases, it can take up to a year for diplomats to be given access to a detainee or prisoner and they are generally accompanied by prison or law enforcement officials during their visits, contrary to the official pledges of free and confidential access

¹⁰ See *Khamidkariev v Russia* (Application No. 42332/14), European Court of Human Rights (2017) available at <http://hudoc.echr.coe.int/eng/?i=001-170468>. See also *Fast-Track to Torture, Abductions and Forcible Returns from Russia to Uzbekistan*, 2.1 “Rendition to Torture”, pages 8-9 for more information on Mirsobir Khamidkariev’s case.

¹¹ 1250 meeting - 8-10 March 2016 - Decision case H46-18 Garabayev group v. Russian Federation / 38411/02 available at: [http://hudoc.exec.coe.int/ENG#{"fulltext":\["garabayev"\],"sort":\["EXECPublishedDate Descending"\],"EXECDocumentTypeCollection":\["CMDEC"\],"EXECIdentifier":\["CM/Del/Dec\(2016\)1250/H46-18"\]}](http://hudoc.exec.coe.int/ENG#{)

proffered by the Uzbekistani authorities as part of diplomatic assurances.

In their October 2016 letter to Amnesty International (see above) the Uzbekistani authorities gave details of the visits granted to those prisoners forcibly returned from the Russian Federation since 2014 and mentioned in the annexed *Fast-track to Torture* publication. No visits of Russian diplomats were listed.

On 10 January 2017, the European Court of Human Rights ruled that I.U., an asylum seeker from Uzbekistan who had been granted anonymity by the Court, would face a real risk of torture under Article 3 of the Convention if returned to Uzbekistan. The Court found that “the domestic courts’ unquestioning reliance on the assurances of the Uzbek authorities, despite their formulation in standard terms, appear[ed] tenuous given that similar assurances ha[d] consistently been considered unsatisfactory by the Court in the past.” In its judgment the Court noted with particular concern that in its final decision the Supreme Court of the Russian Federation found “that the applicant’s claims were hypothetical and lacked specific indications regarding the level of risk... without reference to any relevant evidentiary material...” and “that the assurances of the Uzbek authorities were satisfactory.”¹²

The European Court has repeatedly warned the Russian authorities of the dangers of relying on diplomatic assurances when assessing the risk of torture and ill-treatment to an individual upon return. However, the Russian authorities appear to continue to disregard the Court’s warnings.

4. COMPULSORY DEPORTATION OF “UNDESIRABLE ALIENS” FOR ADMINISTRATIVE OFFENCES

Short of resorting to complicity in the abduction of individuals, the Russian authorities have sought other ways to circumvent their international obligations and have used administrative means, such as deportations for administrative offences, to return individuals to Uzbekistan.

Lawyers and NGOs working in Russia have told Amnesty International that since 2014 the Russian authorities have increasingly, and additionally, resorted to declaring migrants and asylum-seekers “undesirable aliens”, especially if they had previously been convicted of a crime under Russian law or were suspected of membership of banned Islamist groups and were therefore considered a threat to national security, public order or public health. In such cases, an “exclusion order” can be issued against the individual and the courts can order their automatic and immediate deportation.

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.¹³

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 Convention if returned to Uzbekistan. 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 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

¹² See I.U. v Russia, (Application no. 48917/15), European Court of Human Rights (2017) available at <http://hudoc.echr.coe.int/eng?i=001-170031>

¹³ See *Fast-Track to Torture, Abductions and Forcible Returns from Russia to Uzbekistan*, 2.5 Russia’s Compulsory Deportation of “Undesirable Aliens” For Administrative Offences, pages 15-17 for more information.

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 on 28 August 2014.¹⁴

Asylum-seeker Olim Ochilov (see above under 1. "Abductions and Forced Returns") who was forcibly returned to Uzbekistan in July 2016, had been declared an "undesirable alien" and a deportation order was issued against him.

CONCLUSIONS AND RECOMMENDATIONS

As detailed above and in the annexed briefing, Amnesty International research has verified the continuing practice of co-operation and collusion between the Russian Federation and Uzbekistan, for the purpose of forcibly returning individuals to Uzbekistan where they are at real risk of torture or other ill-treatment.

Therefore, Amnesty International calls on the Committee of Ministers to strengthen and intensify its monitoring of this group of judgments and urge the Russian Federation to fully implement, in practice and in law, the European Court of Human Rights' judgments and interim measures in cases of forcible return from the Russian Federation to Central Asian states, in particular Uzbekistan. The organisation urges the Committee of Ministers to adopt an interim resolution requesting the Russian Authorities to adopt the following measures:

- Fully and systematically ensure that no one within the Russian Federation's jurisdiction is forcibly returned, by means of extradition or otherwise, to any country, including Uzbekistan, where they would be at risk of torture or other ill-treatment as well as unfair trials or any other serious human rights violations, and set up transparent and effective monitoring mechanisms to ensure compliance with such measures;
- Refrain in practice from the use of and reliance on diplomatic assurances to circumvent the absolute obligation under international law not to extradite or otherwise forcibly return persons to places, including Uzbekistan, where they are at risk of torture and other ill-treatment, as previously requested by the Committee of Ministers;
- Use all available means to obtain regular and unhindered access, for monitoring purposes, to those detained applicants returned to Uzbekistan;
- Fully and systematically comply in practice with all Rule 39 interim measures and judgments of the European Court of Human Rights, in particular in relation to cases of return and extradition;
- Adopt as a matter of priority measures to ensure prompt, effective, impartial and independent investigations into disappearances and forced transfers as previously requested by the Committee of Ministers, with those allegedly involved or complicit brought to justice in trials meeting international fair trial standards;
- Stop automatically detaining and deporting individuals, including asylum-seekers, who have been declared "undesirable aliens" to their country of origin, including Uzbekistan, without assessing in earnest the risk of torture upon return and refrain from their forcible return where the risk exists, and establish an effective mechanism whereby an individual declared an "undesirable alien" is granted the right to appeal the decision to deport;¹⁵
- Ensure that measures introduced by the authorities to protect individuals at risk of abduction, including the practice of apprising individuals of their right to state protection, are implemented effectively and systematically in all cases and throughout the jurisdiction of the Russian Federation.

¹⁴ 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#{)

¹⁵ *Administrativnoe vidvorenje*, in Russian.