

Reference: B1936

AMNESTY INTERNATIONAL'S SUBMISSION TO THE COUNCIL OF EUROPE COMMITTEE OF MINISTERS

6 March 2019

GARABAYEV v. RUSSIAN FEDERATION (No.38411/02) GROUP OF CASES

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, in advance of the 1340th (Human Rights) meeting of the Ministers' Deputies on the execution of judgments in the Garabayev Group of cases against the Russian Federation.

Amnesty International would like to share with the Committee of Ministers its concerns about continuing forcible returns and abductions from the Russian Federation of foreign nationals, exposing them to the risk of torture or other ill-treatment. 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.

In two new cases, concerning Tajikistani political activist Sharofiddin Gadoev, legally residing in the Netherlands, and Azeri political activist Fakhraddin Abbasov, who had a residence permit in Russia valid until 26 February 2019, the Russian authorities appeared to violate their obligations under international refugee and human rights law.

This briefing follows two earlier submissions to the Committee of Ministers by Amnesty International delivered in 2013¹, 2017² and a report published in 2016, *Fast-Track to Torture: Abductions and Forcible Returns from Russia to Uzbekistan*.³ Because of the pressing nature of the information submitted herein, Amnesty International could not make this submission to the Committee of Ministers in a more timely manner.

The forcible return of Sharofiddin Gadoev to Tajikistan

In the case of the February 2019 abduction of political activist Sharofiddin Gadoev, the Russian Federation has most likely breached Articles 3, 5, 6, 13 and 34 of the European Convention on Human Rights and Fundamental Freedoms. Sharofiddin Gadoev could not have been abducted, disappeared or forcibly transferred from Russian

¹ See 1179 DH meeting (24-26 September 2013) - Communication from a NGO (Amnesty International) (27/08/2013) (76 pages) in the Garabayev group of cases against Russian Federation (Application No. 38411/02) - Rule 9.2 of the Rules of the Committee of Ministers available at: [https://hudoc.exec.coe.int/ENG#{"EXECIdentifier":\["DH-DD\(2013\)917E"\],"EXECDocumentTypeCollection":\["ngo"\],"EXECTitle":\["garabayev"\]}](https://hudoc.exec.coe.int/ENG#{)

² See 1288th meeting (June 2017) (DH) - Rule 9.2 Communication from a NGO (Amnesty International) (23/02/2017) in the GARABAYEV v. Russian Federation (Application No. 38411/02) available at: [https://hudoc.exec.coe.int/ENG#{"EXECIdentifier":\["DH-DD\(2017\)353E"\],"EXECDocumentTypeCollection":\["ngo"\],"EXECTitle":\["garabayev"\]}](https://hudoc.exec.coe.int/ENG#{)

³ Amnesty 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/>.

territory without the knowledge and passive or active involvement of the Russian authorities. At the very least, the Russian Federation has failed to protect him from exposure to the risk of torture or other ill-treatment.

Sharofiddin Gadoev is a member of the National Alliance (a coalition of opposition parties) in Tajikistan and the leader of the opposition political movement Group 24, many of whose supporters are in exile. He has been critical of the policies of President Emomali Rahmon of Tajikistan. The previous head of Group 24, Umarali Kuratov, was killed in Turkey in March 2015.

Sharofiddin Gadoev, who was legally living in the Netherlands, had publicly stated on numerous occasions that he had no intention of returning to Tajikistan, where he is at risk of torture or other ill-treatment and unfair trial. A legal representative of Sharofiddin Gadoev, Viktoria Nadezhdina, explained that the activist had travelled to Moscow, the capital of the Russian Federation, on 14 February from the Netherlands for meetings with representatives of the Russian Security Council, who gave him assurances regarding his security. However, Sharofiddin Gadoev disappeared following that meeting and reappeared the next day in Tajikistan's capital Dushanbe. It was later revealed that he had been forced into a car by Russian Security Service Officers and put on a flight to Tajikistan. After spending one day under house arrest in his family home in the southern town of Farkhor, Sharofiddin Gadoev was transferred to an undisclosed location on 20 February by officers from the Tajikistani Ministry of Internal Affairs and special forces.

On 24 February, the Netherlands' Foreign Ministry declared that the Tajik authorities had confirmed that Sharofiddin Gadoev was arrested and accused of "criminal activities".⁴

On 2 March, Sharofiddin Gadoev was transferred from Dushanbe to Frankfurt with diplomatic assistance without any ID documents and returned home to the Netherlands the same day. The Tajikistani authorities have not publicly issued administrative or criminal charges against Sharofiddin Gadoev.

Tajikistani opposition figures have in the recent past been arrested, subjected to torture or other ill-treatment and sentenced in flagrant violation of the right to a fair trial. In 2015, the arrest and criminal prosecution of 14 leaders of the opposition Islamic Renaissance Party of Tajikistan (IRPT) saw numerous violations of the right to a fair trial, and there were credible allegations of torture and other ill-treatment and strong suspicion that the charges against them were politically motivated.

The abduction or forcible return of Fakhraddin Abbasov (Aboszoda) to Azerbaijan

Fakhraddin Abbasov, a political activist from Azerbaijan, was forcibly returned by the Russian authorities to Azerbaijan in recent days and is at grave risk of torture or other ill-treatment, unfair trial and other serious human rights violations. The Russian Federation has most likely breached Articles 3, 5, 6, 13 and 34 of the European Convention on Human Rights and Fundamental Freedoms. Fakhraddin Abbasov could not have left the Russian territory without the knowledge and passive or active involvement of the Russian authorities.

Fakhraddin Abbasov is one of the leaders of the Talysh national movement in Azerbaijan. In August 1993, he was elected chairperson of the short-lived Talysh-Mugan Autonomous Republic. In 1994, following the dissolution of the Republic by the Azerbaijani authorities and the arrest and prosecution of 30 of its activists (some of whom died in detention), he was forced to flee to Russia where he lived until 2005 – the year he returned to Azerbaijan. He had to flee the country again in October 2008 after a wave of repression against civil

⁴ *Kidnapped' Tajik Activist Reappears In Europe*, Radio Free Europe 2 March 2019, <https://www.rferl.org/a/kidnapped-tajik-activist-reappears-in-europe/29799932.html>

society activists.⁵ Since then, he has lived in Russia continuing his work in support of the rights of Talysh people and engaging in educational and academic work to promote Talysh language and culture. He has not returned to Azerbaijan since 2008.

From June 2011 to June 2014, he had temporary asylum in the Russian Federation. On 26 February 2014, Fakhraddin Abbasov was issued with a residence permit for foreign citizens valid until 26 February 2019. In the same year, he renounced his Azerbaijani citizenship and applied for Russian citizenship. However, no information is available about the status of his application.

On 14 July 2018, when Fakhraddin Abbasov was residing outside of the country, he was charged by the Main Investigating Department of the State Security Service of Azerbaijan under Article 281.2 (“public calls for violent overthrow of the constitutional order or violation of the territorial integrity of Azerbaijan”) and Article 283.1 (“incitement of hatred”) of the Criminal Code of Azerbaijan. Fakhraddin Abbasov denies the charges. On the same day, the Azerbaijani authorities put him on the Ministry of Interior “wanted list”.

On 6 September 2018, Fakhraddin Abbasov voluntarily visited the Lyubertsy District police station in the Moscow region and was arrested on the basis of an extradition request issued by Azerbaijan. On 7 September 2018, the Lyubertsy Town Court ruled that Abbasov be held on remand. His detention was repeatedly extended in the Kolomna pre-trial detention centre in the Moscow region. He unsuccessfully appealed against his detention.

On 9 October 2018, while in detention, Fakhraddin Abbasov applied for asylum to the Main Directorate of the Ministry of the Interior for Moscow region. This application was rejected on 12 October 2018, on the grounds that he already had a residence permit in the Russian Federation. Fakhraddin Abbasov contested this decision and, on 28 February 2019, a hearing of his appeal was due to take place at Moscow Tverskoy District court. However, Fakhraddin Abbasov did not turn up at the court and the hearing was postponed until 18 March.

Fakhraddin Abbasov’s lawyer spoke to Amnesty International on the morning of 27 February, the day after his client’s residence permit in the Russian Federation expired. He informed Amnesty International that the staff of the detention centre told him that law enforcement officials came to the pre-trial detention centre and presented a letter, allegedly from the Prosecutor General’s office, ordering Fakhraddin Abbasov’s release, and then drove him away. The staff were clearly intimidated and refused to say who the officers were. According to the lawyer Fakhraddin Abbasov was last seen on the premises of the Prosecutor’s Office in Lyubertsy, Moscow Region.

Fakhraddin Abbasov’s whereabouts remained unknown until 1 March, when the Azerbaijani State Security Service reported they had detained him at Baku International Airport on 28 February 2019 following his deportation from Russia. However, Lyubertsy Court officials denied to Fakhraddin Abbasov’s lawyer that a deportation hearing on his case had taken place at their court. Fakhraddin Abbasov’s forcible transfer from the Russian Federation could not have occurred without the knowledge and passive or active involvement of the Russian authorities.

Amnesty International has for many years documented serious human rights violations in Azerbaijan. Torture and ill-treatment remain widespread and the authorities continuously fail to investigate such allegations, and the Azerbaijani courts have on numerous occasions admitted as evidence “confessions” allegedly obtained under torture. Many criminal trials in Azerbaijan have been conducted in violation of the right to a fair hearing, including denial of access to a lawyer of choice and accepting without investigation evidence allegedly collected through torture or other ill-treatment. Government critics who have tried to exercise their rights to freedom of expression, association and peaceful assembly, have been prosecuted under false charges and imprisoned following unfair trials.⁶

⁵ CASE OF MAMMADOV AND OTHERS v. AZERBAIJAN, (Application no. 35432/07), 21 February 2019, <http://hudoc.echr.coe.int/eng?i=001-189960>

⁶ *Amnesty International urges Azerbaijan to release all persons held for exercising their rights and to put an end to torture and other ill-treatment*, PUBLIC

Amnesty International calls on the Committee of Ministers to urge the Russian Federation to fully implement, in practice and in law, the European Court of Human Rights' judgments in cases of forcible return from the Russian Federation. 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 where they would be at real risk of serious human rights violations, including torture and other ill-treatment, or a flagrant denial of the right to a fair trial, and set up transparent and effective monitoring mechanisms to ensure compliance with such measures;
- Adopt, as a matter of priority, measures to ensure prompt, effective, impartial and independent investigations into any 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;
- Ensure full respect for the principle of *non-refoulement* by guaranteeing that for each individual, including asylum-seekers, the authorities engage in an individualized assessment of the risk of serious human rights violations – including torture and other ill-treatment – upon return; refrain from their forcible return where the risk exists, and establish an effective mechanism whereby an individual is granted the right to challenge the decision to deport;
- 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.