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**AMNESTY
INTERNATIONAL**



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**AMNESTY INTERNATIONAL'S SUBMISSION TO COUNCIL OF EUROPE COMMITTEE OF MINISTERS:
THE GARABAYEV GROUP OF CASES AGAINST THE RUSSIAN FEDERATION**

Dear Ms Mayer,

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.

Annexed to the briefing is the following document:

Return to Torture: Extradition, forcible returns and removals to Central Asia (AI Index: EUR 04/001/2013), July 2013. In this report, Amnesty International documents the increasing practice of co-operation and collusion between member states of the Commonwealth of Independent States (CIS), including the Russian Federation, for the purpose of returning people to Central Asian countries where they are at real risk of torture or other ill-treatment.

Yours sincerely,

Dr Nicolas J Beger
Director

AMNESTY INTERNATIONAL'S SUBMISSION TO COUNCIL OF EUROPE COMMITTEE OF MINISTERS: THE GARABAYEV GROUP OF CASES AGAINST THE RUSSIAN FEDERATION

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 light of the Russian Federation's obligations under international human rights and refugee law, Amnesty International seeks to assist the Committee of Ministers in its evaluation of the measures that the Russian Government states it 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.

In advance of the 1179th DH meeting of Ministers' Deputies on the execution of judgments in the Garabayev Group of cases, Amnesty International would like to share with the Committee concerns about extraditions and abductions of Central Asian nationals from the Russian Federation to Central Asian countries. These 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 its decision adopted at its 1176th meeting (10 July 2013), the Committee of Ministers noted with grave concern a further incident involving allegations of kidnapping and illegal transfer of an individual protected by an interim measure indicated by the Court under Rule 39 (the Mamazhonov case). The Committee "strongly insisted that light be shed on this incident and on the fate of the applicant as quickly as possible" and called on the Russian Federation to urgently implement measures to ensure the immediate and effective protection of applicants in a similar situation against kidnapping and irregular removal from the national territory. At its March 2013 meeting (DH 1164th meeting), the Committee also called upon the Russian authorities to "adopt a set of measures to ensure rapid and effective investigations into disappearances and forced transfers".

Amnesty International supports these calls to the Russian authorities given the current situation of increasing numbers of incidents of forced return and abduction of Commonwealth of Independent States' (CIS) nationals from the territory of the Russian Federation.

In nine cases since August 2011,¹ the Russian authorities circumvented rulings by the European Court of Human Rights by colluding in the abduction of applicants and their return to Tajikistan or Uzbekistan. Amnesty International has received information that the number of arrests of Central Asian nationals for extradition purposes has increased sharply in the Russian Federation in 2013, and NGOs providing legal assistance in extradition cases have received a growing number of requests for assistance.

In the enclosed report, *Return to Torture: Extradition, forcible returns and removals to Central Asia*, July 2013 (AI Index: EUR 04/001/2013), Amnesty International documents the increasing practice of co-operation and collusion between member states of the Commonwealth of Independent States (CIS) for the purpose of returning people to Central Asian countries where they are at risk of torture or other ill-treatment.

In carrying out these returns, the Russian Federation and other CIS states are prioritising regional co-operation and mutual assistance agreements designed to ensure national and regional security and combat terrorism over their international human rights obligations. Agreements such as those in the context of the Shanghai Co-operation Organisation (SCO) (the 2001 Shanghai Convention on

¹ S. Koziyev (Application number 58221/10); S. Dzhurayev (Application number 71386/10); N. Dzhurayev (Application number 31890/11); Y. Kazymakhunov (Application number 26261/05); A. Latipov (Application number 77658/11); Abdulkhakov (Application number 14743/11); R. Zokhidov (Application number 67286/10); Ermakov (Application number 43165/10) and I. Mamadzhonov (Application number 17239/13).

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.²

ABDUCTIONS, ATTEMPTED ABDUCTIONS AND FORCED RETURNS OF APPLICANTS TO THE EUROPEAN COURT OF HUMAN RIGHTS (GARABAYEV GROUP)

In Amnesty International's report, *Return to Torture: Extradition, forcible returns and removals to Central Asia*, the organisation has documented repeated incidents of the Russian authorities circumventing European Court of Human Rights' judgments and interim measures indicated under Rule 39 of the Rules of Court, by resorting to abductions to ensure the return of an individual to a Central Asian state. Incidents of abductions and attempted abductions of asylum-seekers, refugees or other nationals of Central Asian countries by CIS members' security services operating freely on one another's territory and in particular in Russia and Ukraine, have continued unabated over the last few years, and are occurring with such regularity that they amount to a region-wide extraordinary renditions programme. Such extra-judicial transfers, which deliberately circumvent due process, have been described by the European Court of Human Rights as "an absolute negation of the rule of law" amounting to "a violation of the most basic rights guaranteed by the Convention".³

Although the Russian authorities told the Committee of Ministers⁴ that in December 2012 they disseminated the Committee's decisions and instructions issued by different authorities indicating that any attempt to forcibly remove from Russian territory persons in favour of whom the Court has indicated an interim measure should be prevented, Amnesty International has documented a series of cases where international law has been subverted to secure the transfer of individuals who were supposedly protected from return to Central Asia by Rule 39 interim measures indicated by the Court.

For example, on 18 July 2012 the Russian Supreme Court upheld the decision of the Murmansk Regional Court to extradite Yusup Kasymakhunov⁵ (part of the Garabayev Group of cases) to Uzbekistan, disregarding both its own Resolution No. 11 (14 June 2012) and a July 2012 interim measure indicated under Rule 39 by the European Court of Human Rights. On 10 December 2012 Yusup Kasymakhunov was released from detention and four days later was abducted from his apartment and transported to Uzbekistan on a passenger plane.⁶ At the time of writing, Amnesty International has reason to believe that he is in a pre-trial detention facility in Uzbekistan.

The recent abduction on 13 June 2013 of Uzbekistani national Ikhromzhon Mamazhonov⁷ (Garabayev Group of cases) as he was released from detention in Orenburg, shows that Russia continues to flout international law in order to return individuals to countries where they will be at risk of further grave violations, namely torture and other ill-treatment. In March 2013 the European Court of Human Rights had issued an interim measure under Rule 39 to prevent Ikhromzhon Mamazhonov from being returned to Uzbekistan.

The frequency with which these deliberate circumventions are now occurring represents a deep structural challenge to the authority of the European Court of Human Rights and the integrity of the Council of Europe as a whole.

² Amnesty International, *Return to Torture: Extradition, forcible returns and removals to Central Asia* (AI Index: EUR 04/001/2013), July 2013, pp15-16.

³ European Court of Human Rights *Abdulkhakov v Russia* (14741/11), paragraph 156.

⁴ Summary of 1176th meeting of Committee of Ministers 10.7.13.

⁵ European Court Application number 26261/0.

⁶ Amnesty International, *Return to Torture: Extradition, forcible returns and removals to Central Asia* (AI Index: EUR 04/001/2013), July 2013, page 31.

⁷ European Court Application number 17239/13.

FAILURE OF MEASURES TO ENSURE COMPLIANCE WITH INTERIM MEASURES INDICATED BY THE EUROPEAN COURT OF HUMAN RIGHTS UNDER RULE 39 OF ITS RULES OF COURT

The Russian Supreme Court decree No. 11 of 14 June 2012 instructing judges to carefully evaluate the arguments of persons wanted for extradition “taking into account all the evidence available” including reports by UN structures on the situation in the requesting state, raised hopes that Russian courts might begin to properly assess the risk of torture or other ill-treatment in extradition hearings. However, according to information provided by lawyers, in practice the courts have not complied with these instructions.

For example, Gairatbek Saliev,⁸ a 24-year-old ethnic Uzbek from Kyrgyzstan, appealed against his extradition to Kyrgyzstan from Russia in June 2013, claiming he would be at serious risk of torture and other ill-treatment should he be returned. His legal defence team believes the charges against him had no basis and were ethnically motivated. Gairatbek Saliev, along with ethnic Uzbek Bahtijor Mamashev,⁹ aged 28, and ethnic Uzbek Mahamadillo Kadirzhanov,¹⁰ aged 42, from southern Kyrgyzstan's Jalal-Abad region, fled to Russia in July 2010, following violent clashes between ethnic Kyrgyz and ethnic Uzbeks in southern Kyrgyzstan. In Kyrgyzstan the three men have been accused of murder, mass riots, robbery, intentional destruction of property and illegal possession of firearms and ammunition in connection with an incident in June 2010 in the southern region of Suzak, when 16 people were killed, including ethnic Kyrgyz civilians and law enforcement officers. Nineteen people were convicted in November 2010, all of them ethnic Uzbeks: 18 of them were sentenced to life imprisonment in a trial that fell short of international standards and did not investigate allegations of torture. The three men maintain they had no part in the June 2010 violence.

Despite the diplomatic assurances given by the Kyrgyzstani authorities to the Russian authorities, Amnesty International believes that Mahamadillo Kadirzhanov, Gairatbek Saliev and Bahtijor Mamashev would be at serious risk of grave human rights violations if returned to Kyrgyzstan. In particular, they would risk being held in incommunicado detention, torture and other ill-treatment and imprisonment in cruel, inhuman and degrading conditions following an unfair trial.

In June and July 2013, the European Court of Human Rights issued interim measures under Rule 39 to protect the three men and prevent their return to Kyrgyzstan pending the Court's substantive examination of their cases.

The Russian Federation's General Prosecutor's Office approved requests for the extradition of Gairatbek Saliev and Bahtijor Mamashev on 27 February 2013 and Mahamadillo Kadirzhanov on 18 March. In April the regional courts in Russia turned down appeals by the men's legal defence teams against the extradition orders. On 19 June 2013, the Russian Federation Supreme Court also turned down Gairatbek Saliev's appeal against his extradition. On 4 July the Supreme Court turned down Mahamadillo Kadirzhanov's appeal and on 29 July that of Bahtijor Mamashev.

Diplomatic assurances are a dangerous and unreliable mechanism that allows a sending government to circumvent the absolute prohibition on sending a person to a place where he or she risks torture or other similar ill-treatment. Simple promises from a requesting state that it will not torture or otherwise mistreat a person upon return cannot substitute for a state's absolute obligation not to transfer a person to a place where he or she is at risk of such abuse. All states must respect existing, legally-binding international machinery of human rights protection. Diplomatic assurances allow governments to circumvent that machinery, and thus represent erosion – not an advance – of human rights protection. Moreover, the particular dynamics of torture and other ill-treatment lead to inherent deficiencies in assurances that prevent them from effectively and reliably mitigating against such abuse. In particular, governments that practice torture and similar abuse routinely deny it; create administrative structures to support plausible deniability; develop techniques of abuse designed to avoid detection; and conceal evidence of it.

⁸ European Court of Human Rights application number 39093/13.

⁹ European Court of Human Rights application number 47823/13.

¹⁰ European Court of Human Rights application number 42351/13.

A final Russian Supreme Court Resolution approved on 27 June 2013 confirms that Russian courts should take into account the jurisprudence of the European Court of Human Rights where the circumstances of cases and laws applied are similar to Russian law. Given the current circumstances in the Russian Federation, Amnesty International fears that this Resolution will not be implemented in a systematic way.

CONCLUSIONS AND RECOMMENDATIONS

As detailed above and in the attached report, Amnesty International research has verified the increasing practice of co-operation and collusion between member states of the Commonwealth of Independent States (CIS), including the Russian Federation, for the purpose of returning people to Central Asian states where they are at real risk of torture or other ill-treatment.

Therefore, Amnesty International calls on the Committee of Ministers to effectively monitor and urge the Russian Federation to implement the European Court of Human Rights' judgments and interim measures in cases of return and extradition from the Russian Federation to Central Asian states. The organisation calls on the Committee of Ministers to adopt an interim resolution requesting the Russian Authorities to adopt the following measures:

- Take concrete steps to ensure that no one within the Russian Federation's jurisdiction is returned, by means of extradition or otherwise, to any country where they would be at risk of torture or other ill-treatment;
- Refrain from the use of and reliance on diplomatic assurances to circumvent this obligation and extradite or otherwise return persons to places where they are at risk of torture and other ill-treatment;
- Where it is proposed to return a person to any country, whether by extradition or otherwise, the authorities must ensure that that person has an effective opportunity to seek a review of that decision and is made aware of it. This review must include a full consideration of the risks they would face in the country of return. Ultimately, they must be able to appeal to the courts against a decision to return them. No one should be returned in a way which circumvents such procedures;
- Take steps to ensure the explicit compliance of bi-lateral and regional security and other criminal justice cooperation agreements with international and European human rights standards, in particular those enshrined in the European Convention on Human Rights and Fundamental Freedoms;
- Fully comply with all Rule 39 interim measures and judgments of the European Court of Human Rights in relation to cases of return and extradition; Provide assurances that Mahamadillo Kadirzhanov, Gairatbek Saliev and Bahtiyor Mamashev will not be returned to Kyrgyzstan in compliance with the Court's interim measures.
- Carry out a thorough and impartial investigation into the abductions and cross-border transfers of Yusup Kasymakhunov and Ikhromzhon Mamazonov and the seven other cases and publish the findings;
- Adopt a set of measures to ensure rapid and effective investigations into disappearances and forced transfers as previously requested by the Committee of Ministers;
- Take measures to protect individuals at risk of abduction.