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Reference: mlz0ix7v

Date: Monday, August 22, 2022

Type: Human rights violation

Original: English

Consent: I am/we are the representative(s) of the alleged victim(s), and I/we have her/his/their consent

Related mandates

- arbitrary Detention
- freedom of peaceful assembly and of association
- torture

Victims

Name: Kocsay Makhanbaev

Type: Individual

Sex: Male

Date of birth: [REDACTED]

Victim is a child (under 18 years of age)? No

Nationality: Kazakhstan

Email: [REDACTED]

Telephone: [REDACTED]

Address: [REDACTED]

Ethnic, religious, social or other background: ethnic Kazakh, not a minority

Occupation: entrepreneur

Affiliation or activity: Participation in a peaceful assembly

Identity document Local identification document

Issued by Ministry of Internal Affairs

Issued on [REDACTED]

Identity document number [REDACTED]

Submitted by

Name: Akram Azerbayev

Type: Individual

Email: [REDACTED]

Telephone: [REDACTED]

Address: [REDACTED]

Disclosure

Does the alleged victim(s) or group/community agree to have their name(s) disclosed in a letter that may be sent to the Government, or others, such as intergovernmental organisations including United Nations entities, businesses, military or security companies?
Yes

Does the alleged victim(s) agree to have their name(s) appear in a public report to the Human Rights Council?
Yes

Please confirm that the victim, or the victim's family, or the victim's legal representative is in agreement that the case can be dealt with through the regular procedure of the Working Group
Yes

The identity and the details of the victim's case can be communicated to the Government concerned
Yes

The identity of the victim can be published in the communications report to the UN Human Rights Council
Yes

Case details

Country where the incident allegedly occurred/is occurring/might occur: Kazakhstan

District: City of Almaty, Republic Square

If relevant to your submission, please indicate whether there are additional country/ies where the incident allegedly occurred/is occurring/might occur, or otherwise related to the case submitted Kazakhstan

Please provide a short chronological summary of the incident: what happened; when (date/time); who was involved?

Mr. Makhanbaev joined the protests in Almaty on the 5th of January. He was shot in the crowd on Nazarbayev avenue by the national museum while trying to help another participant of protests who fell after being hit by gun fire. He received 3 bullets into left hip and foot. He was immediately hospitalised into Almaty City Hospital No 12. However on the 8th of January the hospital was raided by militarised police units who detained the wounded protesters in spite of their serious injuries. He couldn't walk and he was therefore made to crawl to the police bus. Physical torture and inhumane treatment continued from the 8th until the 14th of January, see separate section on torture. The prison where he was held was visited by representatives of the Prosecutor's Office who asked whether Kocsay will raise a torture complaint, which he confirmed and he was also moved to medical unit of the detention facility. On January 14th a local investigative court has resolved to place Mr Makhanbayev on a 2 months arrest as a suspect in a serious crime without acknowledging torture and other inhumane treatment and showing little regard for freedoms that the victim attempted to exercise through his peaceful actions. A few days later, on Saturday the 15th of January, he believes a retribution for the complaint was served as he was moved to a room with another wounded. That person was shot in a stomach and layed with his guts out. The constant unbearably sickening stench of organs and faeces in that room was likened by Mr Makhanbaev to a gas chamber, especially given that he was not independently mobile. His observation has been that all 'non-cooperating' detainees were taken to that room at some point in time. He continued to complain and on the 10th of February (nearly a month later) after weeks of pushing he was released right on the day that his defense along with his mother petitioned the Prosecutor's office. The charges however were not dropped and he had to commit not to travel outside of Almaty. Following his release Kocsay continued his complaints to the Prosecutor's office for torture and have met numerous times with all of the Deputy Prosecutor to no avail. On the 1st of June he as well as other victims were going to attend yet another meeting with Prosecutor during the latter's public appointment hours. However they were all detained from their respective homes in the morning on allegation of violating laws of peaceful protest. He was held in detention in Anti - Corruption Service for the whole day and was then released. Mr Makhanbaev immediately left to Prosecutor's office to meet officials as well as his supporters who gathered there. There he was able to meet City's deputy Prosecutor with whom he discussed the case, agreed to meet soon and shook hands at the end. However, on his way back he was detained by police once again who arrived on 3 cars and had taken him to Bostandyk district Police department where he was accused of organising unauthorised protests and given an administrative 15 days jail sentence. This is inspite of number of mitigating circumstances including absence of criminal record. The hearing was conducted in a highly hasty manner with his legal defense observing many violations. He wasn't released on expiration of this sentence, as a court hearing to which his defense team wasn't invited, ruled that he must be arrested in connection with the January charges and placed to the very facility where he was arrested and tortured in January. He remains there to this day. He is physically weakened through poorly treated gunshot wounds and torture injuries. He eats very little food in confinement due to its very poor quality. He is under a constant risk of torture in the facilities where he was already inhumanely, which in itself puts a pressure on him. Last, but not least, he is illegally detained and arrested due to exercising his fundamental rights and therefore prosecution against him needs to stop.

Are there witnesses to the incident? Don't know

Is there evidence or substantiating information concerning the incident? Don't know

Does the alleged victim believe she/he was targeted due to her/his Engagement in human rights, trade union, political, religious activities or other types of activities, Political or other opinion or beliefs

The victim participated in peaceful protests against rising fuel prices, poverty of population and government corruption that took place across Kazakhstan in early January and specifically in Almaty on the 5th of January 2022.

Has the incident been reported to the relevant authorities? Yes

Please include details of any complaints filed or any other action taken by the alleged victim(s) or anyone else on their behalf?

His family and defense has petitioned City Prosecutor's office on the 10th of February when he was briefly released, although charges (of rioting) were not dropped. During the period between February and June he met numerous times with the City's deputy Prosecutor while attempting to meet the Prosecutor to complain regarding arrest and investigation for participating in the peaceful protest.

Has the Government taken action to prevent or investigate the incident, punish the perpetrators, or ensure compensation to the alleged victim(s)? Don't know

Is this case under consideration by any other international or regional body? Don't know

arbitrary Detention

Date of arrest

14/01/2022

Place of arrest

Investigative court of Almaty

What reasons were given for the arrest?

Participation in rioting, Article 272, part 2 of the Criminal Code of Kazakhstan

What was the legal basis for the arrest?

Order of a judge of an investigative court

Date of detention arrest

08/01/2022

Duration of the detention

6 days until the arrest

Place(s) of detention (indicate any transfer and the current place of detention)
 facility LA- 155/18 in Almaty, also known as CI-18

Reasons given for the detention

participation in the riots

Legal basis for the detention

Unknown

What are the reasons why you believe the deprivation of liberty is arbitrary?

For the duration of the entire investigation the prosecution was unable to prove the fact of any specific violation or illegal acts on his part. Furthermore, arrest order is highly biased towards attempting to frame Mr Makhanbaev as rioting not leaving any room whatsoever to a possibility of him exercising his fundamental rights. Nevertheless Mr Makhanbaev was detained and remained under prolonged arrest twice: first on the 8th of January till mid February and then once again from the 1st June to present.

Are the reasons for the deprivation of liberty authorized by the law?

No

Are the reasons for the deprivation of liberty linked to the exercise by the victim of her/his human rights or fundamental freedoms?

Yes

If yes, please elaborate

Kocsay Mohanbaev came to join a peaceful protest. His right to live was endangered as he was shot 3 times from an indiscriminate fire likely to have been opened by government at protesters. The same right as well as right for respect were denied as he was detained from a hospital and tortured on arrival to detention facility. His dignity suffered too as he was subjected to inhumane and degrading torture.

If applicable, do you know if the right to a fair trial has been respected? (for example : the right to defend yourself and the right to legal assistance; the right to be presumed innocent until proven guilty according to law; the right to a fair and public hearing by a competent, independent and impartial tribunal established by law; the right when charged with a criminal offence to be informed of the nature and cause of criminal charges brought against them; etc.)

Yes

If yes please elaborate

A decision by investigative judge resolving to arrest Mr. Mohanbaev attempts 'not to preempt a question of guilt', yet refers to his 'intent to participate in rioting', a 'likelihood of him engaging in criminal conduct' and alleges 'self awareness in dangers to society posed by his criminal intent'. His defense has no to limited access to the investigative materials/his dossier. Appointment rules at the local SI 18 are such that his lawyers need to spend many hours queuing waiting to see him in itself discouraging from defense. Mr Makhanbaev's right to a fair trial has been grossly violated.

If yes please elaborate

In February his lawyer and mother petitioned City Prosecutor which led to a release, suspected to also have been caused through prior appeals. While at large in the period from February to June, he has submitted a complaint for torture to Anti-Corruption Service of the Republic of Kazakhstan and also met Deputy City Prosecutor. Yet he was once again put into custody under the same charges.

freedom of peaceful assembly and of association

In what type of activity/ies is the alleged victim (person(s) or organization) engaged?

There are two specific episodes which government considered illegal. The first is victim's participation in peaceful protests in Almaty on the 5th of January 2022, which government refers to as rioting. The second is a gathering of his sympathisers for an appointment with prosecutor on the 1st of June 2022, which government classified as violation of legal requirements for public assembly.

torture

Please indicate where the person was seized (city, province, etc.) and location at which the torture was carried out, if known.

Mr Makhanbaev was seized from a City Hospital 12 of Almaty 3 days after where he was hospitalised after receiving 3 gun shot wounds. Tortured began right at the hospital on the 8th of January, continued through transit and placement in a cell of SI- 18 detention facility in Almaty all the way until the 14th of January.

Indication of the forces carrying out the torture.

The victim believes tortures were carried out by Special Rapid Response Unit of the Police or SOBR, State Security Committee and every guard on shifts between the 8th and 14th of January. Each of these is believed by the victim to have been involved at some point in the ordeals of transfer of the detainees, their placement in confinement and presence in confinement. Those torturing wore masks and did not wear uniforms that could give them away.

Description of the form and methods of torture used and any injury sustained as a result.

At seizure he couldn't walk and he was therefore made to crawl to the police bus, which there were three of to transport the estimated 40 people to jail. Torture continued en route to detention centre and Mukhanbaev counted getting 10 heavy blows from the escorting police including being hit by a barrel of a gun and kicking. On arrival to facility LA- 155/18 in Almaty, also known as CI-18, all detainees (by then approximately 130 apprehended across a number of hospitals), were laid on a cold concrete floor held down by guard's boots and beaten all over their bodies. The perpetrators also walked and jump over the detainees. They were then hastily pushed to their cells while continuing to get heavy blows in kidneys. Those unable to walk had to crawl. Beatings continued in the cell where Mr Makhanbaev counted kicked and punched about 15 times. This continued over the next few days during he endured more kicks and punches targeting among other things gunshot wounds, liver, etc. His face was also smashed against an iron bed. A bit later the prison was visited by representatives of the Prosecutor's Office who asked whether Kocsay will raise a torture complaint, which he confirmed and he was also moved to medical unit of the detention facility. On January 14th a local investigative court has resolved to place Mr Makhanbaev on a 2 months arrest as a suspect in a serious crime without acknowledging torture and other inhumane treatment and showing little regard for freedoms that the victim attempted to exercise through his peaceful actions. A few days later, on Saturday the 15th of January, he believes a retribution for the complaint was served as he was moved to a room with another wounded. That person was shot in a stomach and layed with his guts out. The constant unbearably sickening stench of organs and feces in that room was likened by Mr Makhanbaev to a gas chamber, especially given that he was not independently mobile. His observation has been that all 'non-cooperating' detainees were taken to that room at some point in time

Were any person, such as a lawyer, relatives or friends, permitted to see the alleged victim(s) during detention? If so, how long after the arrest?

Family was only allowed to come and see him on the 10th of February 2022, although he was able to get visits from his lawyer, an elderly man with a background in law enforcement.

What was believed to be the purpose of the torture?

A number of reasons are suspected: - intimidation so as to attempt to force admission of guilt on charges that were to be laid out by the Prosecution - revenge torture of the innocent given that protests in general (i.e. not the protesters per se) dared to respond to violent and escalating methods used by Kazakh police, which lead to well publicized facts of police losing control over the events, mass desertions and defection of its personnel on the side of protesters.

Was the alleged victim(s) examined by a doctor at any point during or after victim's ordeal? If so, when? Was the examination performed by a prison or government doctor?

The victim was examined by a prison doctor and received some basic treatment.

Was appropriate treatment received for injuries sustained as a result of the torture?

It is not believed that treatment was appropriate given the victim's gunshot wounds and beating sustained over nearly a week of inhumane treatment.

Was the examination performed in a manner which would enable the doctor to detect evidence of injuries sustained as a result of the torture? Were any medical reports or certificates issued? If so, what did the reports reveal?

No details available at this time.

Perpetrators

Please specify the number of alleged perpetrators: 20

Is the identity/occupation of the alleged perpetrator(s) known? Yes

The victim believes tortures were carried out Special Rapid Response Unit of the Police or SOBR, State Security Committee agents and SI 18 guards. Only order of magnitude number of perpetrators is known/estimated.

Were the alleged perpetrators State agents or believed to be State agents? Yes

see above

If the alleged perpetrators were State agents, were they acting in their official capacity? Yes

The officers must have been deployed as part of government response to the protests

Additional information

Mr. Makhanbaev suffered the terror and hardship in a company of many other prisoners including Messrs. Nurtas Karaneev, Akylzhan Keysimbayev and Daulet Zhaparbekov.

I tried to upload warrant for Mr Makhanbaev's arrest showing the extent of bias against him and disregard of his fundamental rights, but unable to do so for what must be a technical reasons. I can provide the document on request.

We hope the interntional bodies can help secure Mr Makhanbayev release from arrest and dropping of all the charges.