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The Rule of Law in Jeopardy in Uzbekistan

by Heather Fox*

On August 18, 1999, a lower district court outside Tashkent, Uzbekistan, convicted six men of participating in a "criminal society" and of using mass media to publicly insult and slander the President of Uzbekistan, Islam Karimov. The court held that these activities violated Article 158(3) of the Uzbek Criminal Code, which makes it a crime to criticize the president or the government of Uzbekistan. The court sentenced these men—Muhammad Bekjanov, Rashid Bekjanov, Kobil Diyarov, Ne'mat Sharipov, Iusuf Ruzimuradov, and Mamadali Mahmudov—to prison terms ranging from 8 to 15 years. The men testified in court that the Uzbek police subjected them to repeated torture and coerced them to confess to being members of *Erk*, an outlawed opposition political party. The Uzbek government's alleged abusive treatment of these men typifies a more widespread national problem: the rule of law is collapsing in Uzbekistan and its constitution is failing to protect the rights and freedoms of the Uzbek people.

The Uzbek government based its charges against these six defendants on their alleged possession and distribution of *Erk*, the opposition party's newspaper. The government alleged that *Erk* contained slanderous criticisms of President Karimov. It is unclear what statements in the newspaper the court found objectionable because, after the first day of trial, the public was not permitted to observe the proceeding and the court has not made public a transcript of the trial. The Uzbek government also charged the six men with conspiracy to overthrow the government, but the secrecy of the trial has prevented disclosure of any evidence that supports these charges. The court did not announce its reasoning for closing the trial to the public, but it is possible that it relied on Article 113 of the Uzbek Constitution, which allows exceptions to public trials in special circumstances where secrecy is necessary.

Although the government prohibited observation of the proceedings, Human Rights Watch (HRW) received information describing the torture that Uzbek law enforcement officials inflicted on the defendants. These reports include descriptions of the following torture methods: burning the victims' legs and arms; suffocation; hanging them by their hands, which were tied behind their backs; electric shocks; and beatings. The Uzbek authorities detained these men and isolated them for up to several months at a time. Furthermore, HRW attended the trial on the first day, before the court closed its proceedings to the public, and learned that the authorities had never informed the defendants of the charges against them. After the trial began, one defendant announced that he was still without counsel, five months after his arrest.

According to HRW, Uzbek authorities arrested, tortured, and convicted these men based on their ties to the banned political party, *Erk*, and their possession of the banned newspaper *Erk*. Though the six men were exercising their constitutionally guaranteed right to freedom of expression under Article 29 of the Uzbek Constitution, the court held that membership in *Erk*, as an alleged "criminal society," justified the convictions.

The Uzbek government's suspicion of *Erk* increased after six reported bombings in Tashkent, the capital, on February 16, 1999. The bombings killed 15 people and injured 150 others. Since the February bombings, the Uzbek government has arrested and detained hundreds of people believed to be conspirators in the attack. Five hundred individuals are currently awaiting trial, and the court has sentenced about 150 individuals. Both the high volume of cases and the secrecy surrounding their adjudication has made it difficult to estimate the number of supposed conspirators arrested to date.

Abuses of Civil and Political Rights

As early as December 1997, the Uzbek government began an operation of mass arrests in response to the murder of three prominent public officials. HRW believes that these arrests were arbitrary because, within a few days of the murder, authorities arrested over 1,000 people and the only documented arrests were of men. Some men were apprehended simply because they wore beards, a Muslim

sign of piety. According to Maureen Greenwood, an Amnesty International (AI) expert on Eastern Europe and Asia, the Uzbek government considers the wearing of beards to be a sign of extremism.

In a May 1998 special report on Uzbekistan, HRW gathered testimony about numerous cases in which Uzbek authorities arrested openly pious Muslims on falsified charges after police planted evidence of narcotics in the defendants' homes. In addition, the Uzbek government closed independent mosques and privately operated Islamic schools and expelled students for wearing veils or headscarves. Furthermore, HRW verified that Uzbek authorities held many of those imprisoned beyond their sentence terms and routinely used the torture methods described in the case of the six *Erk* members.

In 1999, AI issued a general report on the arrests in Uzbekistan highlighting a statement by President Karimov that he was "prepared to rip off the heads of 200 people, to sacrifice their lives, in order to save peace and calm in the republic." Karimov also advocated harsh measures for those "who are trying by any means to introduce political Islam, religious extremism and fanaticism," and reportedly told the Uzbek Parliament that "fundamentalists should be shot." In response to criticism from both international and domestic human rights organizations, and foreign governments, President Karimov either flatly denied human rights abuses or stated that such abuses are necessary because revolution and instability threaten Uzbekistan's transition to a fully democratic system.

Political Climate

The timing of these mass arrests, including the torture and conviction of the six men in August 1999, suggests that political motives were involved. Alarmed by the chaotic events in neighboring Afghanistan and Tajikistan, President Karimov perceived the murders of the three public officials in December 1997 as a threat to Uzbekistan's national security. Uzbek authorities focused their crackdown on the Ferghana Valley, an unstable area due to the political climate of neighboring countries. Afghanistan, to the south of Uzbekistan, has undergone explosive changes since the Soviet Union's invasion in 1979, and the fundamentalist Taliban regime currently retains control over two-thirds of the country. President Karimov has stated that he believes Uzbek Islamic extremists are being trained in Afghanistan. Tajikistan, to the east, is still suffering the violence of its 1992 to 1997 civil war. Uzbekistan's support of certain military factions in Tajikistan during this civil war is the source of current border tensions between the two countries. By undertaking this mass arrest policy, President Karimov is attempting to quell any unrest resulting from the current political climate in Afghanistan and Tajikistan. He is mandating these arrests, however, at the expense of the rights and freedoms of the Uzbek people.

The Uzbek Constitution

The Uzbek Constitution, adopted in 1992, guarantees basic human rights for Uzbek citizens. Articles 33 and 34, for example, recognize the right of free association through political organizations, demonstrations, and popular movements. Article 62 safeguards the right of free association by stating that the dissolution of this right can take place only "on the basis of a decision of a court of law." The government, however, has not only declined to uphold these rights, but has rejected them under the guise of state security. When Uzbek authorities arrested the six members of *Erk* in August 1999, they violated several constitutional provisions, including Articles 25 and 26. These articles prohibit torture, arbitrary arrests and detentions, and guarantee due process. Furthermore, the mass arrests of bearded men and the expulsion of students wearing religious paraphernalia contradicts the right to freedom of religion, as enumerated in Articles 31 and 61. Article 61 states that "religious organizations and associations are separate from the state and equal before the law. The state does not interfere in the activities of religious associations." In

continued on next page

Uzbekistan, continued from previous page

reality, the state has interfered by arbitrarily closing mosques and independent Islamic schools.

Constitutional Caveats

A close reading of the Constitution reveals that certain caveats allow the Uzbek government to infringe upon protected rights. Article 57, for example, directly contradicts Article 33 and Article 34 protections by placing profound restrictions on the right to freely associate in political organizations, demonstrations, and popular movements. The article forbids individuals from participating in any organizations that "protest against the sovereignty, integrity, or security of the republic or the constitutional rights and freedoms of its citizens." This clause effectively bans any opposition political party, such as *Erk*, from exercising its freedom of expression. Article 57 also contains an ambiguous clause that forbids associations that encroach "on the health or morality of the people; or that are militaristic formations or ethnically or religiously based political parties." Thus, Uzbek authorities are able to engage in such mass arrests because the Constitution criminalizes a broad and undefined range of activity.

Article 61 is another example of how the Constitution contradicts itself. This provision states that only courts can restrict fundamental freedoms. Other articles in the Constitution, however, empower the government to restrict these fundamental freedoms. Yet another example of the Constitution's internal inconsistency is Article 93, Section 1, which concerns the duties of the president. Section 1 states that the president "acts as a guarantor of compliance with the rights and freedoms of citizens, and with the Constitution and laws of the Republic of Uzbekistan." Section 2 of the article, however, allows the president to adopt "necessary measures to protect the sovereignty, security, and territorial integrity of the Republic of Uzbekistan." Section 2, therefore, allows President Karimov to unilaterally balance the fundamental freedoms of the Uzbek people with his own concerns for national security. Karimov did exactly this when he banned *Erk*. He restricted freedoms of expression and association to combat what he perceived was a threat to national security.

Original Intent to Enforce and Legislative Impediments

President Karimov is a Soviet-era authoritarian, arguably not inclined to enforce democratic laws that prevent him from taking measures he deems necessary for national security. The Supreme Soviet elected Karimov president in March 1990, and although the Uzbek people re-elected him by popular vote in December 1991, most observers did not view the 1991 election as free or fair because the government severely limited the participation of opposition parties.

The Uzbek people also cannot rely on new legislation to protect their dwindling rights. Article 95 empowers the president, with the approval of the Uzbek Constitutional Court (Court), to disband parliament when he feels it is adopting laws that are contrary to the Constitution. Parliament, therefore, acts under the constant threat of disbandment if it opposes Karimov's positions. Thus, legislative action designed to protect citizens' rights is doubtful.

The Judiciary's Ineffectiveness

As provided in the Uzbek Constitution, the judiciary is a wholly independent branch of the government, subordinate only to the constitution and the law. The public, however, widely mistrusts the judiciary. As in the case of the six *Erk* members, the judiciary conducts many trials in secrecy, creating an aura of distrust and fear. Even if a judge were to sympathize with the *Erk* members, it is unlikely the judge would do so publicly. According to AI's Greenwood, President Karimov publicly pronounces the outcome that he wants to happen and judges fear being dismissed from their positions or being physically harmed if they do not decide a case according to Karimov's pronouncements.

A constitutional court does operate in Uzbekistan; however, the ability of the Court to have a significant role in reforming or enforcing the law is minimal because certain provisions of the Constitution

preclude the Court from protecting citizens' rights. Because Article 107 of the Constitution provides that judges of the Court are appointed to five-year terms, the judges do not have the advantage of judicial independence. It is conceivable that, if their decisions are unpopular, they are unlikely to be re-appointed. Article 93, Section 10, of the Constitution grants the president the duty to nominate potential members of the Constitutional Court and present them to parliament for election. Furthermore, under Section 11 of Article 93, the president may appoint and dismiss from office judges of regional, district, city, and commercial courts. As long as the president has this power of arbitrary dismissal, there is little hope that the Court can improve protections of citizens' rights. Finally, upon resignation of his office, the president may assume a lifetime seat on the Court under Article 97 of the Constitution.

International Law

In September 1995, Uzbekistan ratified the International Covenant on Civil and Political Rights (ICCPR), binding Uzbekistan to the protection of certain fundamental rights under international law. Article 9 of the ICCPR explicitly states that "anyone who is arrested shall be informed, at the time of arrest, of the reasons of his arrest and shall promptly be informed of the charges against him" and that "anyone arrested . . . shall be brought promptly before a judge." Uzbekistan violated this article when it began its trial against the six *Erk* members without informing the men of the charges against them. Article 14 of the ICCPR includes three important guarantees of due process: the right to counsel; the right to an immediate trial; and the right against self-incrimination and forced confessions. As noted earlier, however, Uzbek authorities did not provide counsel to one *Erk* defendant and forced all six defendants to sign confessions. In addition, Uzbekistan violated Article 18 of the ICCPR, which allows religious freedom, when it closed down mosques and independent Islamic schools.

In 1995, Uzbekistan also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention). Uzbek authorities tortured the six *Erk* defendants in direct violation of this Convention. Article 1 of the Torture Convention forbids any act that is inflicted to punish or to force a confession, or if it is based on discrimination. Further, the article specifically prohibits torture if it is inflicted in the presence of, or at the consent or acquiescence of, a public official. The burnings, electric shocks, and suffocation that the *Erk* defendants reported clearly violate numerous provisions of the Torture Convention.

In addition to the rights included in its Constitution, the Uzbek government is bound to protect human rights under international law. Accordingly, NGOs have begun to encourage the international community to assume a role in pressuring the Uzbek government to adhere to international law and respect its citizens' rights and freedoms. For instance, HRW recently submitted a formal petition to the UN Committee Against Torture regarding the human rights violations in Uzbekistan, with hopes of drawing the United Nations' attention to Uzbekistan's non-compliance with its international obligations.

Conclusion

The arrests, detention, torture, and conviction of the six *Erk* defendants illustrates two legal crises in Uzbekistan: first, the rule of law is collapsing; second, the Uzbek people have limited resources to redress their injuries. There are laws to protect human rights, yet the Uzbek government violates them and the courts are unable or unwilling to enforce them. President Karimov uses caveats in the Constitution to restrict basic freedoms and internal mechanisms for reform show little promise. International law also protects the rights of the Uzbek people, but the lack of enforcement mechanisms permit violations of the ICCPR and the Torture Convention to continue unpunished. The international community should support the democratic endeavors of Uzbek citizens and pressure the Uzbek government to fully enforce domestic and international legal norms. ☉

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