

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://www.hrw.org/news/2009/07/22/letter-bulgarian-authorities-regarding-extradition-turkmenistan>

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Human Rights Watch and Bulgarian Helsinki Committee are writing to you as a matter of urgency to ask that Bulgaria decline a request made by the government of Turkmenistan for the extradition of Kakajan Ataev, a citizen of the Russian Federation.

We are convinced that Mr. Ataev is at high risk of torture and ill-treatment should he be extradited to Turkmenistan. We are also convinced that there is a strong possibility that he would not be tried by a fair and impartial court.

On May 6, 2009 while Mr. Ataev was entering Bulgaria, he received a subpoena to appear at the Varna district investigation service at passport control. As requested, on May 11, 2009 at around 10 a.m. he appeared at the Varna district investigation service. At 12:10 p.m. he was detained for 24 hours by the Varna City Police Department and held at the police detention center. Mr. Ataev was informed that he was detained because the Turkmen authorities had placed him on an international wanted list on bribery charges.

Ataev's detention was extended on May 12, 2009 by the prosecutor's office for 72 hours. Mr. Ataev was released on bail on May 15, 2009. On June 15, 2009 the Embassy of Turkmenistan in the Russian Federation communicated its request for Mr. Ataev's extradition to the Embassy of the Republic of Bulgaria in the Russian Federation. The Prosecutor General of Turkmenistan issued the request for extradition in May 2009 by based on bribery charges against Mr. Ataev.

Mr. Ataev previously held both Russian and Turkmen citizenship. On July 21, 2003 he sent a request to renounce his Turkmen citizenship, along with his Turkmen passport to the Ministry of Foreign Affairs of Turkmenistan.^[1]

Criminal charges for bribery were launched against Mr. Ataev in 2001. The charges derive from events that allegedly took place in 1997-1998. The Russian Federation has declined the Turkmen government's request to extradite Mr. Ataev, and Mr. Ataev continued to work in Moscow and travel internationally. This travel included visits to Bulgaria in 2006 and 2008. It should be noted that on May 20, 2009, after Mr. Ataev was arrested in Bulgaria, the office of the prosecutor general of Turkmenistan added new charges related to the same events.

We believe Mr. Ataev faces a risk of torture or other serious ill-treatment if returned to Turkmenistan, as evidence, including rulings of the European Court of Human Rights, have made it clear that any criminal suspect in Turkmenistan is at such risk. Turkmenistan remains one of the most repressive and authoritarian countries in the world, two-and-a-half years after the death of Saparmurad Niazov, who declared himself president for life. The current government has taken several initiatives to reverse some of the most ruinous social welfare policies of Niazov. But aside from releasing a handful of political prisoners and easing restrictions on travel inside the country, it has taken no significant steps to improve the human rights situation. The Turkmen government continues to threaten those inside the country who raise even the smallest questions about its policies. Independent civil society activists and journalists cannot work freely in Turkmenistan, which remains closed to independent human rights monitors. Unknown numbers of people languish in Turkmen prisons following unfair trials on what appear to be politically motivated charges. Draconian restrictions on freedom of expression, association, movement, and religion remain in place.

Activists in Turkmenistan make credible allegations of beatings and other forms of torture used to coerce confessions and intimidate defendants and witnesses. Methods include suffocation with plastic bags, beatings with batons, food and sleep deprivation, and injection of unknown narcotics. These violations are compounded by the complete lack of access to detention facilities for independent monitors and the overall vacuum of human rights monitoring in the country.

Three recent rulings by the European Court of Human Rights found that returning an individual to face trial in Turkmenistan would constitute a violation of the returning country's obligations under Article 3 of the European Convention on Human Rights to prevent torture. In *Garabayev v Russia* (June 2007) the risk of ill-treatment alleged by the applicant had materialized in Turkmenistan, where he had been beaten and detained in inhuman conditions following his extradition. In *Ryabikin v Russia* (June 2008), the Court found that extradition to Turkmenistan would place an individual at risk of ill-treatment. The court highlighted the lack of any possibility for human

rights monitoring in Turkmenistan and the systematic refusal of access for international observers to the country.

In its October 2008 decision, *Soldatenko v Ukraine*, the Court noted the lack of an effective system of torture prevention in Turkmenistan. The Court went further than it had in the *Ryabkin* decision to state that there was no one group more at risk than another, but "simply the mere fact of being detained as a criminal suspect" in Turkmenistan provides sufficient grounds to fear a serious risk of ill-treatment. The scope of this finding is unusual for the Court. In order for all Council of Europe member states, including Bulgaria, to comply with their obligations not to send anyone to a place where they would be at risk of ill-treatment, a de-facto moratorium on extraditions or expulsions of all individuals to Turkmenistan should be put into effect.

Human Rights Watch is not in a position to assess the legitimacy of the bribery charges. It is worth noting, however, that Mr. Ataev was closely associated with former foreign minister Boris Shikhmuradov, who was imprisoned after being tortured and receiving an unfair closed trial in 2002 on charges of related to the alleged November 2002 armed attack on Niazov. He has not been heard from since his arrest. The criminal case was initiated against Mr. Ataev during the peak of political persecutions in Turkmenistan in 2002-2003, when Mr. Shikhmuradov had already fallen out of favor with the government.

More than 50 individuals, many of them associates of Mr. Shikhmuradov were convicted in relation to the November 2002 alleged armed attack on Niazov-including Boris Shikhmuradov's brother and the former ambassador to the OSCE Batyr Berdiev. The whereabouts and fate of the main defendants remain unknown. The investigations and subsequent trials following the assassination attempt were characterized by a blatant disregard for basic due process and fair trial standards. The OSCE Moscow Mechanism rapporteur on Turkmenistan, Prof. Emmanuel Decaux, characterized them as "political justice." The trials were closed, and defendants were held incommunicado from the time of their arrest and not granted counsel of their choice. In some cases defense counsel had little or no notice prior to the beginning of court hearings. "Confessions" by some defendants were broadcast on television, including by Mr. Shikhmuradov and Mr. Berdiev. Reports suggested that these "confessions" were scripted and likely the result of torture and mind-altering drugs administered in custody. Human Rights Watch is aware of unconfirmed reports that eight defendants in the 2002 plot case have died in detention.

In a July 2008 decision (*Komarovski v. Turkmenistan*), the UN Human Rights Committee found that in the aftermath of the alleged November 2002 attack against Niazov the authorities flagrantly abused the justice process and failed to investigate and prosecute torture and arbitrary detention of suspects. The government so far has taken no action to implement the decision.

We believe there is a risk that Mr. Ataev, as a known associate of Mr. Shikhmuradov, would be at heightened risk of such ill-treatment and deprivation of the right to a fair trial. Although the prosecutor general of Turkmenistan in the extradition request has expressed assurances that Mr. Ataev will not be tortured, there is no evidence whatsoever in the Turkmen government's human rights record to indicate that these assurances will be honored. Moreover, the extradition request itself violates the presumption of innocence in that it states that after Mr. Ataev will be prosecuted and "after the trial and serving his sentence" he could leave the territory of Turkmenistan.

Because Mr. Ataev faces a credible threat of almost certain ill-treatment or torture, his extradition would violate Bulgaria's obligations under the international law.

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) prohibits inhuman treatment and torture including the return, expulsion, deportation or extradition of any person to a country where they would face a real risk of exposure to such treatment.

Article 3 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also imposes an obligation not to return a person to places where they are likely to be tortured.

We hope you will therefore reject Turkmenistan's extradition request. Should you require further information about the human rights situation in Turkmenistan, please do not hesitate to contact us.

Thank you for your attention to this urgent letter.

Sincerely,

Holly Cartner
Executive Director

Europe and Central Asia division
Human Rights Watch
Bulgarian Helsinki Committee

[1] Human Rights Watch has on file a copy of Kakajan Ataev's Russian passport of, but is unable to verify the current status of his Turkmen citizenship.

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