

AMNESTY INTERNATIONAL

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Tajikistan must immediately release journalist and stand-up comedian Khairullo Mirsaidov

Khairullo (Khayrullo) Mirsaidov, who is an independent journalist and the leader of the Tajikistani national KVN comedy team¹, has been held in SIZO 1, a pre-trial detention facility in Khudzhand, the main city of Soghd region in northern Tajikistan, since 5 December 2017 on charges that include embezzlement, forgery, providing false testimony and inciting national racial, regional or religious enmity. Amnesty International believes that Khairullo Mirsaidov is a prisoner of conscience who is being punished solely for exercising his right to freedom of expression. Khairullo Mirsaidov should be immediately and unconditionally released.

The Prosecutor's Office of Soghd Region instigated criminal proceedings against Khairullo Mirsaidov after he published an open letter in November 2017 addressed to the President and the Prosecutor General of Tajikistan as well as to the Chairman of Soghd Region, containing corruption allegations against local officials in Khudzhand. One of the charges, under Article 189 of the Criminal Code of the Republic of Tajikistan "Inciting national, racial, regional or religious enmity", likely relates to some of the satirical comedy materials Khairullo Mirsaidov prepared for the KVN team.

In December 2017, Amnesty International addressed its concerns about the arbitrary prosecution of Khairullo Mirsaidov to the Prosecutor General of the Republic of Tajikistan and called on him to use his authority to ensure that all criminal charges against Khairullo Mirsaidov were dropped, that he was released promptly from pre-trial detention and that he was able in future to carry out his work as a journalist and continue his activities as part of the KVN comedy team unhindered. Amnesty International's letter remains unanswered.

On 28 December 2017, Khairullo Mirsaidov's father was able to visit him in the pre-trial detention center. Khairullo Mirsaidov informed his father that he denies all the charges and called for an impartial investigation of the allegations against him. After the meeting, which was held in private, his father informed the media that Khairullo Mirsaidov had no complaints about the conditions of his detention and that he had not been subjected to any unlawful pressure.

¹ KVN stands for *Klub Veselyh I Nahodcheyh* in Russian, a stand-up comedy competition which originated among university students in the Soviet Union and is still popular in many post-Soviet states.

CRIMINAL PROCEEDINGS AGAINST KHAIRULLO MIRSAIDOV

On 5 December 2017 the Prosecutor's Office of Soghd Region summoned Khairullo Mirsaidov for questioning in relation to his public criticism of local government officials. He was detained upon arrival and charged with three criminal offences: embezzlement or misappropriation of state funds under Article 245 (4-6) of the Tajikistani Criminal Code, forgery of documents, stamps, signatures under Article 340 (1) and making deliberately false accusations under Article 346 (2). In a particularly worrying development he was later charged with inciting national, racial, regional or religious enmity under Article 189 (2). On 8 December Khudzhand City Court remanded him to in pre-trial detention for two months.

The first three charges all relate to the allegations of corruption that Khairullo Mirsaidov made against local government officials in Khudzhand. In the open letter he published in November 2017, Khairullo Mirsaidov claimed that the Head of the Soghd Regional Department of Youth and Sport had demanded a bribe of US\$1,000 out of the funds allocated to the KVN comedy team by the government to fund the team's participation in a KVN competition abroad. Khairullo Mirsaidov claims that when he refused to pay the bribe the KVN team was not disbursed any funds and was, as a result, unable to attend the competition. In response to the open letter, the Head of the Regional Department of Youth and Sport accused Khairullo Mirsaidov himself of embezzling government funds and requested the Prosecutor's Office of Soghd Region to open an investigation into Khairullo Mirsaidov.

On 17 January 2018, the Prosecutor's Office of Soghd Region informed media group Asia-Plus that Khairullo Mirsaidov had been charged with the embezzlement of US\$ 34,000 of state allocated funds and that the sum may be higher, depending on the outcome of the preliminary investigation, which was still ongoing.² At the same time, the Prosecutor's Office of Soghd Region has still not released any specific details as to what the charge of inciting national, racial, regional or religious enmity relates to. The Office's spokesperson was quoted by various media sources as stating that the charges were related to materials posted on the internet by Khairullo Mirsaidov. Some media outlets quoted Khairullo Mirsaidov's father as saying that according to the case materials he had been able to see, the KVN comedy team was accused of having "insulted the honour and dignity of the Tajik people" in some of their comedy sketches.

On 7 January 2018 representatives of the international KVN movement³ made a public appeal on behalf of Khairullo Mirsaidov in which they spoke in his defence against the charges of inciting national, racial, regional or religious enmity in his KVN role. KVN representatives insisted that the Tajikistani KVN team's comedy sketches and jokes never had any intention of inciting any enmity or discord and that hundreds of Tajikistani comedy team supporters came to the TV studios to watch the recording of the Tajikistani KVN team's performances.

² <https://news.tj/en/news/tajikistan/laworder/20180117/sughd-prosecutors-office-charges-the-head-of-the-khujand-kvn-team-with-embezzlement-of-tjs300000>

³ <http://moskvn.ru/allnews/item/3246-t.html>

AMNESTY INTERNATIONAL'S CONCERNS

The right to freedom of expression, which includes the right to seek, receive and impart information, is protected under Article 19 of the International Convention for Civil and Political Rights (ICCPR), to which Tajikistan acceded to in 1999.

As set out in Article 19 of the ICCPR, any interference with the right to freedom of expression must meet a three-part test. It must be provided for by law; it must be to protect certain, specified public interests or the rights and reputations of others; and it must be demonstrably necessary and proportionate to achieve one of the specified purposes of protecting a legitimate interest. Legitimate interests are defined as the respect of the rights or reputations of others, and the protection of national security or of public order (*ordre public*), or of public health or morals.

States are also required to prohibit “advocacy of hatred” that constitutes incitement to discrimination, hostility or violence (sometimes referred to as “hate speech”). This includes materials disseminated through the internet. Under Article 20.2 of the ICCPR, states have an obligation to prohibit statements that express “national, racial or religious hatred” constituting “incitement to discrimination, hostility or violence” against the group in question. These prohibitions must be explained clearly in law and be formulated in a precise way. They must be applied in a way that does not unduly limit the right to freedom of expression. In addition, any legal limits restricting freedom of expression must be precise and clear enough for a person to be able to regulate their own behaviour so as not to break the law.

Based on the information received by Amnesty International, the organization believes that the allegations of corruption against a local government official contained in the Open Letter published by Khairullo Mirsaidov, do not constitute a threat to national security, public order, health or morals. The government in Tajikistan itself has been conducting a nation-wide campaign against corruption, encouraging individuals to disclose instances of corruption.

While the allegations of corruption may have been perceived as an attack on the reputation of a local government official, the measures taken against Khairullo Mirsaidov, such as depriving him of his liberty, are not necessary and proportionate for the purpose of protecting a legitimate interest.

Moreover, it is well established in international law that public figures should tolerate more, rather than less, criticism than private individuals. Thus, in numerous cases, the European Court of Human Rights has ruled that the limits of acceptable criticism are wider as regards a public figure than as regards a private individual. Open discussion about the actions of public officials is a matter of public interest. Public figures lay themselves open to close scrutiny by the public at large, and therefore must consequently display a greater degree of tolerance to various forms of criticism.

Finally, the satirical nature of the comedy sketches presented by the KVN team does not constitute “advocacy of hatred”. Satire is a form of artistic expression and social commentary and, exaggeration and distortion of reality are its inherent features. Amnesty International believes that the criminal charges brought against Khairullo Mirsaidov for

satirical depiction of stereotypical national traits in comedy sketch shows amounts to unjustified interference with his right to freedom of expression, which Tajikistan is under obligation to protect under national and international law.

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