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PERMANENT MISSION OF THE REPUBLIC OF AZERBAIJAN TO THE UNITED NATIONS OFFICE AND OTHER INTERNATIONAL ORGANIZATIONS AT GENEVA



AZƏRBAYCAN RESPUBLİKASININ BMT-*n*İN CENEVRƏ ŞƏHƏRİNDƏKİ BÖLMƏSİ VƏ DİGƏR BEYNƏLXALQ TƏŞKİLATLAR YANINDA DAİMİ NÜMAYƏNDƏLİYİ

237 route des Fayards, 1290 Versoix, Suisse E-mail: geneva@mission.mfa.gov.az Tél: +41 (0) 22 901 18 15 Fax: +41(0)22 901 18 44

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The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other international organizations in Geneva presents its compliments to the to the Office of the High Commissioner for Human Rights and, with reference to the joint letter dated 18 January 2013 of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, has the honour to transmit herewith the responses of the Ministry of Justice of the Republic of Azerbaijan concerning the case of Mr. Hilal Mammadov.

The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other international organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Enclosure: 4 pages.

Geneva, 20 March 2013

THE OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS GENEVA



OHCHR REGISTRY
20 MAR 2013
Recipients: SPD
S. Lichene (boto)

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INFORMATION

Regarding the joint request of the UN Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, on the situation of human rights defenders, on torture and other cruel, inhuman or degrading treatment or punishment

In the UN Special Rapporteurs' request regarding Mr. Mammadov's case the information on the carried out inquiry, investigation, trial, medical examination, as well as on the protection of his physical and psychological integrity while being in detention was requested.

In this regard a thorough investigation has been carried out, the investigation materials, the information obtained from Nizami, Sabail, Nasimi district courts of Baku, and from Baku Court of Grave Crime, as well as Baku Court of Appeal decisions have been studied.

It was established that on 21 June 2012 Mammadov Hilal Alif oghly was arrested on the suspicion of illegally obtaining and storing large amounts of narcotics, heroine; the following day he was charged as an accused person under Article 234.4.3 of the Criminal Code (Illegal storage of large amounts of narcotics for the purpose of selling).

On the basis of a prosecutor's presentation by the decision of the Nizami District Court as of 22 June 2012 H.Mammadov was sentenced to three months of pre-trial detention, where the beginning of his sentence was calculated from the time of his arrest, i.e. 21 June 2012. On 14 August 2012 Baku Appeals Court upheld the district court's decision.

During the investigation it was established that he illegally obtained and stored large amounts of narcotics with a view of selling, closely cooperated with foreign countries' special service authorities and on the basis of orders of those authorities by using the funds earned from the selling of narcotics he published anti-Azerbaijani publications with a view to cause the detriment to the territorial integrity of the Republic of Azerbaijan and state security, and gave speeches on infringement of territorial integrity and internal stability of the country; thus, on 3 July 2012 he was accused under Article 274 (high treason), Article 283.2.2 (Excitation of national, racial or religious hostility) and Article 234.4.3 (Illegal storage of large amounts of narcotics with a view of selling) and for the purpose of investigation the case was forwarded to the General Prosecutor's Investigation department on Grave Crimes.

Taking into consideration the continuation of the investigation on the basis of the investigator's petition the length of his sentence was extended by the Nasimi region's court's decision as of 15.09.2012 for four months, i.e. until 21.01.2013 (one week remains till the end of his sentence). By the decision of the Appeals' court as of 20.09.2012 the regional court's decision was deemed to be correct (in the rapporteurs' letter it is shown that H.Mammadov was kept under the arrest for a longer time).

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On the 25.12.2012 the criminal case entered the Baku Grave Crimes' Court's proceeding. For the time being after holding preparatory meeting the trial of the criminal case was established and it was decided to hold a partially closed trial.

During the primary investigation while being interrogated Mr. Mammadov claimed that on 21 June 2012 he was attacked by 6-7 people and suffered physical abuse.

It should be noted that, these claims by Mr. Mammadov received legal evaluation and based on those specificities a detailed and legal investigation took place in accordance with existing legislation and relevant international documents. During the investigation all the possible necessary actions were implemented, including taking of official statements from the persons involved in the arrest and persons who came in direct contact with him right after the arrest, a forensic examination and additional commissioned forensic examination took place, however specificities mentioned in the complaint were not detected.

Therefore, the deputy general prosecutor dismissed the initiation of criminal proceedings on 27 August 2012 since the actions did not constitute a crime.

H.Mammadov appealed to the Sabail District Court of Baku for this decision, and asked for the annulment of the judgment dated 27 August 2012. The Court decided on 8 November 2012 that the complaint was inconsistent, the Court of Appeal of Baku agreed with this decision on 19 November 2012.

At the same time, in the letter of Special Rapporteurs' it is requested to provide information on legal basis of these court decisions and their compatibility with international human rights standards and principles.

In this connection it should be noted that when issuing a decision an independent court is guided by domestic legislation, as well as international law, providing interpretation or evaluation to such decisions is an exclusive authority of higher instance courts.

As to the motion submitted by Mr. Mammadov's lawyer requesting the audio and video taping of the hearing and another motion requesting Mr. Mammadov be allowed to sit outside of the court cage, both motions were rejected by a decision given after a court consultation.

Regarding Mr. Mammadov's physical and psychological integrity while in detention, it should be noted that he was admitted to the Investigatory Isolator number 3 on 25 June 2012 and to the Baku Investigatory Isolator on 13 July 2012. While being admitted to these institutions Mr. Mammadov underwent medical examinations. It is reported that he suffers from bronchial asthma since 1984, there is a document confirming that he underwent a one-week treatment in Sankt-Petersburg, however there were no further documents about his disease, the results of examinations and treatment. At the same time Mr. Mammadov carries the asthma relief product - 'Astmopen' with him.

It should be noted that, during clinical, instrumental, as well as x-ray examination of his thorax at the Medical Unit no pathologies requiring treatment were detected. During his later detention at the Investigatory Isolator no choking spasms or breath difficulties typical to bronchial asthma were observed, there were no emergency calls by him for health reasons.

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Based on the letter by Special Rapporteurs, Mr. Mammadov underwent repeat medical examinations at Isolator's Medical Unit. Here his internal organs were scanned by ultrasound, his heart function was checked by ECG and Echocardiography tests, and his thorax was checked by X-ray. Mr. Mammadov refused laboratory analysis in writing, without explaining the reason.

In the end of February Mr. Mammadov received medical examination by leading experts of the Scientific Research Institute of Lung Diseases of the Republic of Azerbaijan and in order to determine the condition of the respiratory system he received a spirogram test. As a result, no ventilation disorder has been registered; also no pathology in bronchus or lungs has been detected. Mr. Mammadov once again refused laboratory analysis.

As of now Mr. Mammadov's health condition is satisfactory, he freely attends doctor's calls, his only complaint is dry cough. Physiological indicators of the organism and the results of the instrumental examinations are close to normal.

As to claims mentioned in the letter of Special Rapporteurs about ill-treatment towards Mr. Mammadov by his cell mate, it should be noted that Mr. Mammadov was detained in the same cell as [REDACTED] from 31 June 2012 to 10 December 2012 and he noted both in writing and orally that in general during his detention he was not subjected to physical or psychological abuse in any way by the accused persons or employees. No appeals were made to prison employees or medics about any conflict between the two during their detention together, or about J. Abuzarov beating, torturing, physically or psychologically abusing H. Mammadov, also there are no entries in the medical files about any injuries sustained as a result. The defendant party did not make any requests for the investigation on Mr. Mammadov's beating by his cell mate.

As to the issue of the health of Mr. Mammadov's cell mate mentioned in the Rapporteur's letter, it should be noted that he was charged under Article 177.3.2 (causing large scale damage), he underwent primary examinations while being admitted to Baku Investigatory Isolator, no pathology was detected in his psychological sphere and his health was evaluated as 'practically healthy'. Also, there is no record of him being a mental patient at the Republican Psychiatric Hospital number 1.

In the beginning of December 2012, [REDACTED] complained to doctors about having spasms and was held for observation at the medical unit of the institution, and on 10 December 2012 he was transferred to the Hospital of the Ministry of Justice. However, after being examined and observed no spasms similar to epilepsy were detected on [REDACTED], thus was advised to stay under doctor's supervision and on 26 December 2012 he was sent back to the Baku Investigatory Isolator. The same day for the purpose of medical observation, [REDACTED] was placed in the Isolator's medical unit and on 10 January 2013 stayed there under doctor's supervision. While staying at the medical unit no spasms were observed on him, now he is serving sentence at Prison number 7, his health is satisfactory, no psychological pathology or spasms are being observed.

Thus, on the basis of the above mentioned it was established that no illegal action has been taken against the accused H. Mammadov, and there have not been any threats against his life and health. Like other accused persons his safety and rights are protected in accordance with the legislation. While being kept in Baku Investigatory Isolator H. Mammadov met his family

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members and the people close to him 3 times, he has exercised the right to speak over the phone with those persons 21 times, and has received 25 packages that were sent to him.

In the special rapporteurs' request it is asked to indicate the measures that have been taken to ensure that human rights defenders are able to carry out their legitimate work without fear of threats or acts of intimidation, harassment or criminalization of any kind.

In this regard, in the Republic of Azerbaijan wide opportunities are provided for human rights defenders to enable them to carry out their work, they are fully provided with the rights and freedoms, and are not subjected to acts of intimidation, harassment or criminalization of any kind. In our country the development of civil society as one of the most important elements of the democratic state is constantly kept in the center of attention, and there is a stable system of partnership relations between the government agencies and NGOs. As an example it is possible to show the Public Committee within the Penitentiary system that has been carrying out the public control for a long period of time and whose members are prominent human rights defenders.

**Ministry of Justice of the Republic of
Azerbaijan**

