



*Mission Permanente
de la République Islamique d'Iran
auprès des Nations Unies
et des autres Organisations Internationales à Genève*

In the Name of God, the Compassionate, the Merciful

Ref. 2050/1478952

The Permanent Mission of the Islamic Republic of Iran to the United Nations Office and other international organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and with reference to the latter's Communication No. UA IRN 20/2022 dated 4 October 2022 concerning Mr. **Behnam Mousivand**, has the honor to transmit, herewith, the comment of the High Council for Human Rights of the Islamic Republic of Iran in that regard.

The Permanent Mission of the Islamic Republic of Iran avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 27 January 2023



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In the name of God, the Most Compassionate, the Most Merciful

Comment

By

The High Council for Human Rights

Of

The Islamic Republic of Iran

Regarding Mr. Behnam Mousivand

Communication UA IRN 04.10.22 (20.2022)

1. According to the foregoing person's medical file, he had undergone urethral ureterotomy surgery due to urethral stricture nearly three years prior to his arrest. Considering the medical examinations conducted in the prison health department, he once again suffered urethral stricture, after which the penitentiary doctor requested a urology and ultrasound visit. Despite obtaining the necessary judicial permits, the prisoner refused to be sent to the hospital for diagnosis and treatment on 21 April 2022, 15 August 2021, and 19 October 2021. On 19 April 2022, the abovenamed was transferred to the hospital for an ultrasound evaluation of the urinary tract; however, the ultrasound was not performed, given the unreasonable condition of his pelvic organs. He was hospitalized at Taleghani Hospital on 26 April 2022 because of severe weakness and fatigue. During hospitalization, he underwent an endoscopy and colonoscopy due to gastrointestinal bleeding. An

urologist examined him, performed the necessary tests and ultrasound, and placed the foregoing person under medical treatment. By order of the attending physician, he was discharged from the hospital on 10 May 2022 with a satisfactory general condition. Therefore, the allegations suggesting that the abovenamed was discharged from the hospital despite medical advice are entirely baseless.

2. Sentenced to five years in prison for committing anti-security crimes, he had personally requested to be transferred to Rajaei-Shahr prison on 31 August 2020, and was dispatched thereto on the same date. Be advised that deciding on the place of detention for defendants and convicts in each prison and penitentiary is one of the duties and powers of the State Prisons Organization and the general directorates of prisons in each province; and, the relevant officials shall have to take the necessary measures merely based upon the internal regulations and the enactments of the Classification Council. The person in question was introduced to the Evin Detention Center on 25 April 2022 in line with the implementation of the Prisoners Classification Plan. After coordinating with the judge overseeing security prisoners, he was again transferred to Rajaei Shahr prison on 31 August 2022 and placed under quarantine according to the regulations and in compliance with health protocols. However, from the beginning of admittance to Rajaei-Shahr prison, he protested against the quarantine and his transfer from Evin detention center and went on strike.
3. As emphasized by the By-law of the State Prisons Organization, enacted in 2021, any hunger strike staged by the defendants and convicts is considered a violation which shall be considered by the Disciplinary Council. The hunger strike staged by the abovenamed shows the lack of good morals and behavior as well as non-compliance thereof with the aforementioned By-law. The foregoing person has gone on a hunger strike for various reasons, and by doing so, he has sought to gain illegal privileges.

4. Similar to other prisoners, and irrespective of the nature and type of crimes attributed thereto, the foregoing person enjoys easy and quick access to the prison hospital and doctor 24 hours a day. In case of a lack of special facilities and equipment in prison for treatment, and in line with the application of Article 137 of the Executive By-Law of the State Prisons Organization, enacted in 2021, it is possible to transfer the inmates to any centers situated outside the prison at any hour of the day or night. Having been sent to hospitals¹ outside the prison at least 13 times, the abovenamed was again hospitalized at Taleghani Hospital on 10 September 2022 due to digestive problems caused by hunger strikes. On 24 September 2022, the prisoner in question ended his hunger strike while being hospitalized and receiving medical services. He was transferred to Irfan Hospital for further treatment on 24 October 2022. He has been hospitalized at one of the hospitals outside the prison for about three months. According to the existing financial documents, more than IRR 5,500,000,000 have hitherto been paid to the hospital from the State Prisons Organization's government funds. In addition, by virtue of the order of the judicial authority and in the implementation of Article 522 of the Code of Criminal Procedure, he has been on medical furlough since 4 December 2022 for additional diagnostic measures and special treatment prescribed by the Legal Medicine Organization and is currently outside the prison. Therefore, the allegations suggesting that the foregoing person was denied timely medical care are unsubstantiated.
5. With regards to the allegations suggesting that the said prisoner was beaten by the prison officials, be advised that such claims are false and untrue. The foregoing person does not adhere to any prison regulations and disobeys the correctional officers. In one case, the officers had resorted to legal measures to implement the regulations under the rules and in the absence of any beatings; however, it has been falsely perceived that the foregoing person was beaten – an allegation that does not

¹ The medical centers include but not limited to Taleghani Hospital, Shohada Hospital, Rajaei-Shahr Hospital, and Erfan Hospital.

correspond to the reality. Furthermore, the prisoner has filed no complaint in this regard.

6. Regarding the right of access to a chosen lawyer, on the strength of the Note of Article 48 of the Code of Criminal Procedure, enacted in 2013, “In crimes against the domestic or foreign security as well as in organized crimes the punishment of which are subject to Article 302 of this law, the parties to the claim, at the stage of preliminary investigations shall appoint their lawyer(s) from among official lawyers acceptable to the Chief of the Judiciary. The names of the said lawyers shall be announced by the Chief of the Judiciary. Moreover, pursuant to Article 346 of the said Code: “In all penal matters, parties to an action shall have the right to present their defense attorneys. If a party has introduced more than one lawyer, the presence of one defense lawyer shall be deemed sufficient for the court to proceed to hear the case.” In addition, by virtue of Article 347 of the aforementioned Code: “A defendant shall have the right, up until the close of the first hearing of a case, to ask the court to appoint a defense attorney for them. The court, in case of becoming satisfied that the defendant cannot afford to hire a lawyer, shall appoint a defense attorney for the accused from among the lawyers practicing in that judicial district, and if such choice shall not be available, from among the lawyers practicing at the nearest judicial district, to the court. If the appointed lawyer shall ask for a fee, the court shall fix the fee compatible with the actions taken. In any case, the fee amount shall not exceed the statutory tariffs and shall be paid out of the funds allocated to the Judicature.” According to the Note of the said Article: “Whenever the court deems the presence and defense of a lawyer necessary for a victim who lacks the financial ability, it shall act in accordance with the provisions of this Article.” Therefore, it is evident that the legislator pays and has practically devoted attention to the benefit of the accused in the investigation and trial phases. Therefore, in the preliminary investigation stage, the defendant must choose a lawyer from among the official lawyers approved by the Chief of the Judiciary, and there is no restriction thereon whatsoever during the trial stage. The court appoints a substitute lawyer

even if the accused cannot afford it. Neither the foregoing person nor his family has hitherto introduced any lawyer from among the official attorneys to the judicial authority for legal representation.