



**PERMANENT MISSION OF MONTENEGRO TO THE UNITED NATIONS
OFFICE AND OTHER INTERNATIONAL ORGANIZATIONS IN GENEVA**

No. 01/213 /HRC

The Permanent Mission of Montenegro to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR) – Special procedures branch and in reference to the Joint communication from special procedures Ref. AL NE 2/2024 dated 20 August 2024, has the honour to transmit the letter of H.E. Mr. Ervin Ibrahimović Deputy Prime Minister for International Relations and Minister of Foreign Affairs of Montenegro in response to this communication.

The Mission kindly asks the OHCHR – Special procedures branch to convey the letter to the esteemed addressees.

The Permanent Mission of Montenegro 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 (OHCHR) – Special procedures branch the assurances of its highest consideration.



Geneva, 30 October 2024

**UNITED NATIONS OFFICE AT GENEVA
OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
SPECIAL PROCEDURES BRANCH**



Montenegro
Ministry of Foreign Affairs
Minister

Podgorica, 23 October 2024

Ms. Mary Lawlor, Special Rapporteur on the situation of human rights defenders
Ms. Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
Ms. Gina Romero, Special Rapporteur on the rights to freedom of peaceful assembly and of association

United Nations Human Rights Special Procedures
G e n e v a

Dear Ms. Lawlor,
Dear Ms. Khan,
Dear Ms. Romero,

I have the honour to acknowledge the receipt of your letter dated 20 August 2024, requesting comments on the allegations contained in the letter and additional information about the status of human rights defenders Ms. Dinara Smailova and Mr. Almat Makhamedzhanov in Montenegro, their applications for international protection and the extradition request from Kazakhstan.

Individuals in question expressed their intention to apply for international protection to the Border Police Sector of Montenegro on 17 October 2023, while on 26 October 2023 they formally submitted an application for international protection to the Directorate for Administrative Affairs, Citizenship and Foreigners/Section for Asylum. They are represented in this procedure by the NGO "Civic Alliance" and the procedure in question is still ongoing.

In order to better understand the complexity of the case, allow me to briefly point out the following.

The Article 50 of the Law on International and Temporary Protection of Foreigners stipulates that the Ministry of the Interior shall make a decision on the application for international protection within six months from the date of submitting the application for international protection. The deadline may be extended if necessary to establish a complex factual situation, i.e. to clarify complex legal issues, and no later than 21 months from the date of submitting the application for international protection.

In order to ensure the highest possible degree of objectivity and accuracy of the outcome of the procedure, so that the decision on the application in question is made in accordance with internationally accepted norms and standards, it is of the utmost importance to bear in mind the complexity of procedures on applications for international protection case by case, which underlines proceedings without having a subjective attitude, prejudices, stereotypes, cultural and social assumptions and norms.

In connection with the claims of the special procedures mandate holders, which they received about the alleged surveillance of Ms. Smailova and her husband, in Montenegro, and the risk of extradition of Ms. Smailova, where she is threatened, as stated, with criminal prosecution for her activities in the field of human rights, the Police Directorate of Montenegro – Division for International Operational Police Cooperation (INTERPOL – EUROPOL – SIRENE) acted solely in response upon the foreign request of INTERPOL Astana, conducting police checks only related to the individuals mentioned in the request.

These claims point to additional attention in the context of the obligation of individual assessment in order to determine whether the accusations are legitimate or whether it is a politically motivated persecution, which makes the procedure for an application for international protection particularly complicated, requiring a detailed examination of these circumstances in accordance with international standards of refugee protection and absolute respect for the European Convention on Human Rights (Articles 3 and 6).

Bearing in mind all of the above, and taking into account that during the Global Consultation on International Protection it was stated that "the asylum procedure should respect the confidentiality of all aspects of asylum at all stages, including the fact that the asylum seeker has made such an application", and the EU directive governing this area, it was emphasized that "no information about the asylum application should be shared with the country of origin", which has also been transferred into national legislation, specifically into Article 45 of the Law on International and Temporary Protection of Foreigners, which, among other things, clearly prescribes that personal and other data collected in the procedure upon an application for international protection, and in particular the fact that an application for international protection has been submitted, constitute confidential information and may not be submitted to the country of origin of an alien seeking international protection.

Ultimately, any assessment of whether the fear of persecution in the country of origin of a person seeking international protection is justified is individual and based on all available evidence and established facts and circumstances, especially in the context of credibility, the principle of non-refoulement, and the human rights situation in the country of origin, which will be the case in this specific case.

As per request for extradition, on May 23, 2024, the Ministry of Foreign Affairs of Montenegro received a diplomatic note from the Embassy of the Republic of Kazakhstan to Montenegro with residence in Zagreb (Republic of Croatia), containing a request from the central authority of the Republic of Kazakhstan – the Prosecutor General’s Office – for extradition of Ms. Dinara Botaevna Smailova. In accordance with the principle of reciprocity, the competent authority of Kazakhstan requested the detention and extradition of Ms. Dinara Botaevna Smailova for the purpose of criminal prosecution for committing a crime pursuant to the Criminal Code of the Republic of Kazakhstan. The accompanying documentation provided by the competent authority of the Republic of Kazakhstan states, among other things, that the criminal investigation against Smailova meets the requirements of the International Covenant on Civil and Political Rights, that the criminal investigation for which extradition is requested is not of a political nature, and that, in accordance with the international law, the individual will not be subjected to discrimination on any grounds, nor subjected to torture, cruel, inhuman, degrading treatment or punishment, and that Ms. Smailova will only be prosecuted for the offenses for which extradition has been requested.

In accordance with its national procedure, the Ministry of Justice of Montenegro forwarded the relevant documents to the competent national court for review and further action. As of October 17, the Ministry of Justice had not received feedback from the competent court on the case or regarding the continuation of the process. The second individual, who is of interest to the special rapporteurs, Mr. Almat Makhamedzhanov is not listed in the electronic registry of the Ministry of Justice for monitoring cases related to international legal assistance.

In conclusion, and related to the specific case, Montenegro remains committed to respect and to fulfill all its international obligations in accordance with the international human rights law, principles and standards contained in the core human rights treaties to which is party to, in particular the International Covenant on Civil and Political Rights, the Convention against Torture the Convention Relating to the Status of Refugees and its Protocol of 1967 and the European Convention on Human Rights.

As a reliable UN member state and an active Human Rights Council member, Montenegro will continue to further support the work of human rights defenders and protect the civic space, bearing in mind the fundamental principles set forth in the UN Declaration on Human Rights Defenders.

Please accept, dear Special Rapporteurs, the assurances of my highest consideration.

Ervin Ibrahimović, M. Sc.
Minister

