

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL
AZE 2/2015:

29 May 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 25/2, 24/5, 24/6, 25/18, 26/7, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the pre-trial detention, charges and sentencing of human rights defenders Mr. **Intigam Aliyev**, Mr. **Emin Huseynov**, Ms. **Khadija Ismail**, and Mr. **Rasul Jafarov**.

Mr. Intigam Aliyev is a human rights lawyer and the head of the Legal Education Society, a human rights organisation that provides legal support to non-governmental organisations and persons with low-incomes. Mr. Aliyev has submitted a large number of applications to the European Court of Human Rights concerning election rigging, and violations of the rights to freedom of expression and fair trial. Together with other independent human rights groups in Azerbaijan, he had reportedly been compiling a list of political prisoners in Azerbaijan and advocating for their release. In October 2014, Mr. Aliyev was awarded, together with other prominent Azerbaijani human rights activists, the Andrei Sakharov Freedom Award by the Norwegian Helsinki Committee Andrei Sakharov Freedom Award. Mr. Aliyev was the subject of two previous communications sent by various Special Rapporteurs, dated 1 February 2013, see A/HRC/23/51, case no. AZE 2/2013 and 15 August 2014, see A/HRC/28/85, case no. AZE 5/2014. While we

note the response received from your Excellency's Government to the communication dated 1 February 2013, we regret that, to date, no response has been received to the latter communication. We also encourage the Government to provide more specific answers and clarifications to the questions contained in our communications.

Mr. Emin Huseynov is the chairman of the Institute for Reporters' Freedom and Safety, which monitors and raises awareness of rights violations against journalists. Mr. Huseynov was also involved in the establishment of Objective TV, an independent online news source providing human rights news from Azerbaijan. Mr. Huseynov was the subject of a previous communication regarding his detention and ill-treatment which was sent by various Special Rapporteurs on 24 June 2008, see A/HRC/10/12/Add.1, case no. AZE 1/2008. We regret that, to date, no response has been received to this communication.

Ms. Khadija Ismail is a journalist and human rights activist who has written a number of investigative reports on corruption and has reported extensively on the situation of political prisoners in Azerbaijan and advocated for their release. Ms. Ismail has also worked at the Azadliq Radiosu, a branch of Radio Free Europe/Radio Liberty in Azerbaijan. She received the Gerd Bucerius Free Press of Eastern Europe Award in May 2012, the Courage of Journalism Award from the Washington-based International Women's Media Foundation in October 2012, and the Global Shining Light Award in October 2013. Ms. Ismail was the subject of a previous communication sent by various Special Rapporteurs, dated 1 February 2013, see A/HRC/23/51, case no. AZE 2/2013. While we note the response received from your Excellency's Government on 23 April 2013, we regret that the response did not address the specific concerns and questions raised and encourage once again the Government to provide concrete answers and clarifications to the questions contained in our communications.

Mr. Rasul Jafarov is the Coordinator of Art of Democracy, a campaign that uses artistic expression to promote democracy and human rights in Azerbaijan. He is also the head of Human Rights Club, which launched several campaigns against politically-motivated detentions. In June 2014, Mr. Jafarov presented a report on human rights violations in Azerbaijan to the Parliamentary Assembly for the Council of Europe in Strasbourg, France. Together with other independent human rights groups in Azerbaijan, Mr. Jafarov had been compiling a list of political prisoners in Azerbaijan and advocating for their release. In October 2014, Mr. Jafarov, together with other prominent Azerbaijani human rights activists, was awarded the Andrei Sakharov Freedom Award by the Norwegian Helsinki Committee. Mr. Jafarov was the subject of a previous communication sent by various Special Rapporteurs, dated 12 August 2014, see A/HRC/28/85, case no. AZE 4/2014. While noting the response received from your Excellency's Government on 14 October 2014, we reiterate a number of concerns expressed in the previous communication.

The case of Mr. Intigam Aliyev

According to the information received:

On 24 October 2014, the Nasimi District Court in Baku ruled to extend the pre-trial detention of Mr. Intigam Aliyev until 8 February 2015. His trial on charges of tax evasion, illegal enterprise and abuse of official power, related to grants received in his professional capacity, began on 3 February 2015.

On 17 March 2015, during a hearing of his case at the Court for Grave Crimes in Baku, Mr. Aliyev's defence team reportedly presented documentation to the court to verify that all the grants in question had been registered in accordance with the law at that time.

On 22 April 2015, the Court sentenced Mr. Aliyev to seven and a half years of imprisonment and a three-year ban from certain positions and activities on charges of large-scale misappropriation and embezzlement (article 179.3.2 of the Criminal Code), tax evasion (article 213.2.2), abuse of official power (article 308) and falsifying data in official documents (article 313).

While in detention, Mr. Aliyev's health condition has deteriorated and he has reportedly not been provided with adequate access to medical care, including proper medical examination and treatment. According to reports, he suffers from severe back pain and he moves with difficulty but the medication he is receiving in detention only addresses the pain and not his medical condition. There have also been restrictions placed on his private correspondence, including the seizure of documents and food parcels.

In March 2015, the Council of Europe's Commissioner for human rights filed a submission to the European Court of Human Rights on the case of Mr. Intigam Aliyev, in which he underlined that the case "provides a disturbing illustration of this pattern of reprisals against those who co-operate with international institutions (...) to address human rights shortcomings in Azerbaijan." He further noted that Aliyev's arrest is part of "a clear pattern of repression in Azerbaijan against those expressing dissent or criticism of the authorities".

The case of Mr. Emin Huseynov

According to the information received:

On 16 March 2009, Mr. Emin Huseynov lodged a criminal complaint with the Nasimi District Court concerning his alleged arbitrary arrest without charges and ill-treatment in detention in 2008. On 14 June 2008, Mr. Huseynov was detained following a raid by the police of an event that he had been involved in monitoring. He was badly beaten while in the police station, suffered head and brain trauma

and lost consciousness, as a result of which he was hospitalized. On 31 March 2009, the Court dismissed the Mr. Huseynov's complaint. This decision was upheld on appeal by the Baku Court of Appeal on 27 April 2009.

On 27 October 2009, having exhausted domestic remedies, Mr. Huseynov lodged an application (no. 59135/09) to the European Court of Human Rights (ECtHR) against the Republic of Azerbaijan with regard to arbitrary detention and ill-treatment in detention. On 7 May 2015, the ECtHR ruled in favour of Mr. Huseynov. The judgment stated that there had been a violation of Huseynov's rights under article 3 (prohibition of torture), article 5 (right to liberty and security,) and article 11 (freedom of association) of the European Convention on Human Rights.

On 19 August 2014, State authorities brought new charges in absentia against Mr. Huseynov. In the context of his continuous harassment, sometime in August 2014 Mr. Huseynov reportedly sought refuge in the Swiss embassy in Baku, where he continues to reside. He is currently facing charges of illegal business (article 192), tax evasion (article 213) and abuse of authority (article 308) of the Criminal Code.

The case of Ms. Khadija Ismail

According to the information received:

On 5 December 2014, Ms. Khadija Ismail was summoned for interrogation to the Baku City Prosecutor's office on charges of causing a person to attempt suicide (article 125 of the Criminal Code). Following the interrogation, Sabail District Court issued an arrest warrant for Ms. Ismail. On 6 December 2014, she was transferred to Kurdakhany pre-trial detention centre in the outskirts of Baku. The testimony, upon which the charges against Ms. Ismail were based on, was subsequently publicly recanted.

On 6 March 2015, Nasimi District Court of Baku approved the General Prosecutor's request to extend Ms. Ismail's pre-trial detention on the basis that, if released, she could influence witnesses in the case or flee the country. On 14 May 2015, Ms. Ismail's pre-trial detention was once again extended, with the same justification, by the same court until 24 August 2015.

During her pre-trial detention, further charges have been brought against Ms. Ismail under Azerbaijan's Criminal Code, including large-scale misappropriation and embezzlement (article 179.3.2), illegal business with extraction of income in large size (article 192.2.2), tax evasion (article 213.1) and abuse of power (article 308.2).

The case of Mr. Rasul Jafarov

According to the information received:

On 23 October 2014, the Nasimi District Court in Baku extended Mr. Rasul Jafarov's pre-trial detention by three months.

On 12 December 2014, additional charges of embezzlement (article 179.3.2 of the Criminal Code) and forgery (article 313) were brought against Mr. Jafarov. On 15 January 2015, his trial began at the Baku Court of Grave Crimes.

On 16 April 2015, the Court sentenced Mr. Jafarov to six and a half years in prison on charges of illegal business (article 192), tax evasion (article 213) and abuse of office (article 308) for his alleged failure to register grants made to him as head of the Human Rights Club, and for his alleged misuse of the money he received through these grants. Mr. Jafarov denied the allegations against him, claiming that at the time of the receipt of the grants there was no requirement to register grants that were received in person. The defence also produced grantees' testimonies as to the appropriate use of grant money by Mr. Jafarov. In addition to imprisonment, Mr. Jafarov was ordered to pay 350 Manat (333 US Dollars) for court expenses, and was barred from holding certain positions for three years following his eventual release.

Concern is expressed at the sentencing of Mr. Aliyev and Mr. Jafarov, the extended pre-trial detention of and charges against Ms. Ismail, as well as the charges which have been brought against Mr. Huseynov, all of which appear to be linked to their legitimate and peaceful promotion of human rights in Azerbaijan. Further concern is raised at the physical and psychological integrity of Mr. Aliyev, in particular due to reports of denial of access to adequate medical care. Serious concern is reiterated regarding the increased targeting of human rights defenders in Azerbaijan for their peaceful and legitimate human rights activities. Further concern is expressed that, taken together, the above information appears to show a trend of arrest and sentencing of individuals exercising their rights to freedom of expression and association.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

2. Please provide information concerning the legal grounds for the sentencing and imprisonment of Mr. Jafarov and Mr. Aliyev and explain how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.

3. Please provide information concerning any steps that have been taken by your Excellency's Government to ensure that Mr. Aliyev receive access to adequate medical care while in detention, including to properly treat his illness.

4. Please provide information concerning the legal grounds for the charges brought against Ms. Ismail, including any investigation carried out into the allegations brought against her. Moreover, please indicate the legal basis for the repeated extension of her pre-trial detention.

5. Please provide information concerning the legal grounds for the charges brought against Mr. Huseynov, as well as the results of any investigation carried out into the allegations against him.

6. Please provide information on the measures which are being taken to implement the decision of the ECtHR, including measures to ensure effective remedy for Mr. Huseynov. Furthermore, please provide information on any measures which may have been taken to prevent future ill-treatment in detention.

7. Please kindly indicate what measures have been taken to ensure that human rights defenders in Azerbaijan are able to carry out their legitimate work in a safe and enabling environment without fear of harassment or persecution of any sort.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

It is our intention to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we

have been in contact with your Excellency's Government to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Michel Forst

Special Rapporteur on the situation of human rights defenders

Gabriela Knaul

Special Rapporteur on the independence of judges and lawyers

Juan E. Méndez

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to your Excellency's Government to articles 19 and 22 of the International Covenant on Civil and Political Rights that Azerbaijan acceded to on 13 August 1992, which guarantee the rights to freedom of opinion and expression, and freedom of association respectively, as well as article 14 of the Covenant, which enshrines the right to a fair a public hearing and a series of due process guarantees.

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 8, paragraph 1, which provides for the right to effective and non-discriminatory access to participation in public affairs;
- article 9, paragraph 1, which provides for the right to benefit from an effective remedy and to be protected in the event of the violation of those rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.; and
- article 13, paragraph b) and c), which provides for the right to solicit, receive, and utilize resources for the purpose of peacefully promoting and protecting human rights and fundamental freedom.

We would also like to refer to Human Rights Council resolutions 24/5, in which the Council, inter alia, highlights the States' obligation to respect and protect the right of all individuals to associate freely, and 22/6, which calls upon States to ensure that

procedures governing the registration of civil society organizations are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration and are in conformity with international human rights law.

Moreover, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Azerbaijan acceded to on 16 August 1996, and draw the attention of your Excellency's Government to article 14 of the CAT, which provides that victims of torture should have the right to redress and adequate compensation.

Regarding the case of Mr. Aliyev, a human rights lawyer, we would like to recall the Basic Principles on the Role of Lawyers and in particular principle 16 according to which governments must ensure that lawyers are able to perform their professional functions without interference and without suffering prosecution or other sanctions.

Regarding allegations of denial of medical treatment while in detention, we would like to remind your Excellency's Government that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment, and refer to General Comment 14 on article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Azerbaijan on 13 August 1992, which indicates that States are under the obligation to respect the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services (E/C.12/2000/4, Para.34). In addition, we would like to refer your Excellency's Government to General The Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, according to which prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation (Principle 9).