

Mandates of the Working Group on Arbitrary Detention; 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

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; 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 24/7, 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 alleged arbitrary arrest and detention of Mr. **Evgenii Kushtavkin**, Ms. **Tatiana Timchuk**, Mr. **Alexander Shushlebin** and Mr. **Evgenii Shushlebin**, as well as the alleged torture and ill-treatment of three of these individuals (namely Mr. **Evgenii Kushtavkin**, Ms. **Tatiana Timchuk** and Mr. **Alexander Shushlebin**).

According to the information received:

On 11 August 2014, Mr. Evgenii Kushtavkin, together with his spouse, Ms. Tatiana Timchuk, and her brothers, Mr. Alexander Shushlebin and Mr. Evgenii Shushlebin, were arrested at their permanent residence in Bishkek by police officers and taken to the Main Internal Affairs Directorate of Bishkek City. No arrest warrants were presented.

During the initial period of detention from 11 August to 12 August 2014, Mr. Kushtavkin, Ms. Timchuk and Mr. Alexander Shushlebin were reportedly subjected to torture and ill-treatment in order to extract forced confessions in relation to criminal accusations. Ms. Timchuk was reportedly threatened to be

placed in the Temporary Containment Cell with men who would abuse her sexually. Furthermore, according to the source, on 11 August 2014 Mr. Kushtavkin was seen sitting on a chair while three men were beating him in the chest and groin and tightening a plastic bag around his head. The four detainees were not registered upon admission in detention in accordance with Article 94 of the Criminal Procedure Code of the Kyrgyz Republic.

On 12 August 2014, after 20 hours of detention, Ms. Timchuk and Mr. Evgenii Shushlebin were released without any charge. Ms. Timchuk was pregnant at the time of the detention and miscarried one week after the release. Mr. Alexander Shulebin and Mr. Kushtavkin remains in detention.

On 14 August 2014, Mr. Kushtavkin's detention was registered officially, reportedly on suspicion of carjacking, in accordance with article 94 of the Criminal Procedure Code.

The presence of Mr. Kushtavkin at the Police Department from 8 a.m. on 11 August 2014 until 2 a.m. on 14 August 2014 was not officially registered. This fact allowed police officers responsible for his deprivation of liberty and the ill-treatment he was subject to, to conceal their involvement in these acts and thus evade responsibility.

On 15 August 2014, by decision of the Leninsky District Court of Bishkek City, Mr. Kushtavkin was remanded in custody for a period of one month, until 14 September 2014. On 15 September 2014, the criminal case of Mr. Kushtavkin was filed with the Leninsky District Court for an initial hearing on the merits of the case. Although no judicial decision on the extension of the detention of Mr. Kushtavkin was adopted, he remains in detention.

On 3 December 2014, the lawyer of Mr. Kushtavkin filed a petition with the Court for his immediate release due to the expiration of the detention order three months earlier (15 August 2014). On 3 December 2014, the court rejected the petition, barring any appeal against the decision.

The same day, Mr. Kushtavkin's defence lawyer requested that the judge be removed from this case due to potential prejudice or partiality. On 8 December 2014, the judge was removed.

On 8 December 2014, the lawyer requested the Prosecutor of the Leninsky district of Bishkek City to establish the identity of the police officers who arrested Mr. Kushtavkin and to prosecute them for his arbitrary arrest and detention. Actions of police officers serving at the Main Internal Affairs Directorate of Bishkek City are normally subject to an assessment solely by the Prosecutor's

Office in accordance with Article 163 of the Criminal Procedure Code. Notwithstanding this fact, on 10 December 2014, this request was referred to Inherent Security Department of the Main Internal Affairs Directorate of Bishkek City.

On 18 December 2014, the lawyer thus challenged the legality of the actions of the Prosecutor of Leninsky District to General Prosecutor of the Kyrgyz Republic.

At the time of this communication, Mr. Kushtavkin remains in detention.

Concern is expressed regarding the alleged arbitrary arrest, trial and continued detention of Mr. Evgenii Kushtavkin. Further concern is expressed about the physical and mental integrity of Mr. Evgenii Kushtavkin, Ms. Tatiana Timchuk and Mr. Alexander Shushlebin, who were allegedly subjected to torture and ill-treatment.

While we do not wish to prejudge the accuracy of these allegations, the above allegations appear to be in contradiction with articles 5, 9 and 10 of the Universal Declaration on Human Rights (UDHR), articles 7, 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), and articles 2, 4 and 6 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Kyrgyzstan ratified on 7 October 1994 and 5 September 1997 respectively. These articles include the right not to be deprived arbitrarily of liberty and the right to a fair hearing which, in particular, contains the right to be informed, at the time of arrest, of the charges made and to be brought promptly before a judge. We would also like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in article 1 of the Convention against Torture.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the importance of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with Kyrgyzstan's obligations under the international treaties it has ratified.

As 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 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 arrest and continued detention of Mr. Kushtavkin and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political rights.

3. Please provide any information concerning the allegation that Mr. Kushtavkin was tortured or otherwise ill-treated during his initial unregistered detention; and about any investigation undertaken into these allegations; if no such investigation was ordered, explain why, and how this is compatible with Kyrgyzstan's obligations under the Convention against torture.

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 responsible of the alleged violations.

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.

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

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