

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
UZB 2/2015:

24 August 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/6, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of the judicial harassment of Mr. **Shukhrat Rustamov**, including the declaration by a Court that he is "mentally incompetent".

Mr. Shukhrat Rustamov is a member of the Human Rights Defenders Alliance of Uzbekistan, a grassroots movement working on a variety of human rights issues including protecting victims of torture, ensuring equal access to justice for all, promoting and protecting the right to a fair trial, and advocating for economic and social rights, and the rights of vulnerable groups. Mr. Rustamov also provides legal assistance to victims of human rights violations that have faced difficulties upon attempting to defend their rights in civil, administrative and criminal courts in Uzbekistan.

According to the information received:

On 15 May 2015, at the request of the Foundation "Mahallja", a charitable public foundation of Uzbekistan, an order was issued by the Shaykhantakhur Inter-District Civil Court of Tashkent City requiring Mr. Shukhrat Rustamov to undergo a medical examination.

On 11 June 2015, Mr. Rustamov submitted a report on the human rights situation in Uzbekistan to a State embassy in Tashkent. The report summarized 2,500 complaints that Mr. Rustamov had previously submitted to the President of Uzbekistan concerning human rights violations committed by representatives of

the Uzbek authorities. Mr. Rustamov allegedly requested the Embassy to present this report to the UN Secretary General, Ban Ki Moon.

On 26 June 2015, Mr. Rustamov was forcibly brought by police officers to the Psychiatric-Neurological Dispenser No.1 of Tashkent City in order to undergo the medical examination previously ordered by the court. Mr. Rustamov refused to undergo the examination on the basis that he wanted to appeal the court order.

On 20 July 2015, the Shakhantahurskij Regional Court found Mr. Rustamov to be “mentally incompetent”. This decision was reportedly based on Mr. Rustamov’s medical results. However, Mr. Rustamov had not undergone any medical examination. The hearing was conducted in the absence of Mr. Rustamov, who had refused to appear since members of the Human Rights Defenders Alliance of Uzbekistan had not been given permission to attend the hearing.

On 18 August 2015, the Tashkent City Court on Civil Matters upheld the decision of the Shakhantahurskij Regional Court.

Concern is expressed regarding the decision of the Shakhantahurskij Regional Court to declare Mr. Rustamov “mentally incompetent” reportedly in the absence of any medical examination and the consequent risk that he may be forcibly administered psychiatric treatment against his will at a later date. Further concern is expressed that the threat of such action against Mr. Rustamov could represent a form of intimidation and harassment and may be used in order to dissuade him and others from continuing their peaceful and legitimate work advocating for human rights in Uzbekistan exercising their right to freedom of opinion and expression.

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 the details, and where available the results, of any medical examinations carried out concerning the mental health of Mr. Shukhrat Rustamov. If such an examination has been carried out, please kindly

indicate whether Mr. Rustamov provided his consent to it and how this consent was obtained.

3. Please indicate what measures have been taken to ensure that the right to participation in public affairs, including the submission of complaints, is respected in Uzbekistan.
4. Please kindly indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment 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.

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

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

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights, acceded by Uzbekistan on 28 September 1995, which guarantees the right to freedom of expression.

We would like to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that article 19, paragraph 3 of the ICCPR provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We would also like to draw the attention of your Excellency's Government to the Human Rights Committee's General Comment No. 34 on the right to freedom of expression and opinion. Accordingly, "in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high."

In addition, we would 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 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms; and
- 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.

Regarding the allegations of the arbitrary declaration of Mr. Shukhrat Rustamov as “mentally incompetent”, reportedly without a proper medical examination, and the risk that he may be forcibly administered psychiatric treatment, we would like to refer your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Uzbekistan on 28 September 1995, which establishes the right to the enjoyment of the highest attainable standard of physical and mental health.

More specifically, we would like to point to General Comment 14 of the Committee on Economic, Social and Cultural Rights, which indicates that States are under the obligation to respect the right to health by, inter alia, refraining from applying coercive medical treatments, unless on an exceptional basis for the treatment of mental illness. Such exceptional cases should be subject to specific and restrictive conditions, respecting best practices and applicable international standards. In this connection, General Comment 14 also indicates that the right to health contains both freedoms and entitlements. The freedoms include the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. (see GC 14, Paras. 8 and 34)