

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right to education; 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 torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL OTH 27/2016

7 February 2017

Dear Mr. Tahsin Ertuğruloğlu,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 26/17, 33/9 and 25/13.

In this connection, we would like to bring to your attention information we have received concerning the alleged deportation and detention of Ms. [REDACTED] on the basis of her health status, which was determined through testing without Ms. [REDACTED]'s informed consent.

According to the information received:

Ms. [REDACTED], a Nigerian citizen and a full time student in International Finances at Eastern Mediterranean University in Famagusta (Northern Cyprus), reportedly sought medical care for an [REDACTED] in October 2016. The doctor informed her that a surgery would be required and mentioned that testing would be necessary before surgery, but specifically only mentioned an ECG.

On 19 October 2016, Ms. [REDACTED] went to Gazimagusa Devlet Hastaseni, a hospital in Famagusta, for testing. Her blood was drawn, and an [REDACTED] was conducted on Ms. [REDACTED]'s sample without her knowledge and consent. That same afternoon, she received a phone call requesting her to report to the Ministry of Health in Nicosia on the following day. She also received a phone call from the International Student Office of her university requesting her to go for [REDACTED].

On 20 October 2016, Ms. [REDACTED] went to the Ministry of Health, as requested, accompanied by an officer of the International Student Office at Eastern

Mediterranean University. At the Ministry, she was allegedly told, without any counselling, that she was [REDACTED]. She was then informed that, as a precondition for receiving any further medical care, she could either pay for another [REDACTED], or admit in writing that she was [REDACTED].

According to reports received, Ms. [REDACTED] could not afford the new test and therefore made the admission in writing. Later that day, Ms. [REDACTED] was taken to a police station in Nicosia and detained therein until the next day. During her time at the police station, Ms. [REDACTED] was allegedly mistreated. Police officers reportedly made jokes about her, laughed at her, and slapped her on the face. She was also photographed with a board carrying her name as though she were being arrested.

At no point during her detention was Ms. [REDACTED] given any explanation regarding her detention. She was denied access to a lawyer, did not appear before any court of law, and was not given any deportation order. While in police custody, she was allegedly denied food and medical attention.

On 21 October 2016, Ms. [REDACTED] was woken up and driven to Larnaca International Airport and given a boarding pass for a one way trip to Abuja, Nigeria. She was also given a letter from the Immigration Office stating that, under section 105 of the Law on Aliens and Immigration, she was an inadmissible immigrant. In addition to the letter from the authorities, Ms. [REDACTED] received her university transcripts and a letter signed by the Registrar of her university, dated 20 October 2016, stating that her studies were terminated by her own accord.

Ms. [REDACTED] landed in Abuja without any of her personal belongings, including a laptop, schoolbooks and clothes, all of which remain in Famagusta.

According to the information received, Ms. [REDACTED] did not express any intention to terminate her studies to any University official. In December 2016, she received an email from one of her lecturers indicating that it was possible to complete her courses online. In January 2017, she was allowed to take all her exams on-line and was informed that she had passed all of them. Ms. [REDACTED] is now waiting to receive the university certificate she is entitled to after the successful completion of her degree.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern at the discriminatory treatment Ms. [REDACTED] incurred by law enforcement and education authorities in Famagusta and Nicosia, which appears to be directly related to her health status. Serious concern is expressed at the undue interference with her right to privacy, right to education, right to be free from degrading treatment, and right to informed consent for testing.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** 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/or comment(s) you may have on the above mentioned allegations.
2. Please provide the legal grounds upon which Ms. [REDACTED]'s blood was tested for [REDACTED] without her informed consent.
3. Please provide detailed information on the law under which Ms. [REDACTED] was deported and how such law complies with the principle of non-discrimination. In connection to the deportation of Ms. [REDACTED], kindly indicate whether her belongings have been sent to her, or if she has been given the chance to arrange for them to be sent to Abuja. If this has not been the case, please explain why.
4. Please indicate the legal provision under which Ms. [REDACTED] was held in custody overnight at the police station in Nicosia.
5. Please provide information about the status of the studies that Ms. [REDACTED] undertook at the Eastern Mediterranean University in Famagusta, and indicate whether she is entitled to a certificate and, if it is the case, how would she obtain such a certificate.

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 response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Tahsin Ertuğruloğlu, the assurances of our highest consideration,

Boly Barry Koumbou
Special Rapporteur on the right to education

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

Nils Melzer
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 your first to the fundamental principle of non-discrimination, as enshrined in the International Covenant of Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, both ratified by Turkey on 23 September 2003. Both covenants expressly state that the rights enumerated in each covenants are to be guaranteed “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (CCPR Article 2; CESCR Article 2).

Moreover, General Comment 20 from the Committee on Economic, Social and Cultural Rights recognizes the inclusion of health status under the umbrella of “other status.” “Protection of public health is often cited by States as a basis for restricting human rights in the context of a person’s health status. However, many such restrictions are discriminatory, for example, when HIV status is used as the basis for differential treatment with regard to access to education, employment, health care, travel, social security, housing and asylum.” (E/C.12/GC/20).

We would also like to refer to the report of the Special Rapporteur on Health to the General Assembly on right to health and informed consent (A/64/272), where he states that guaranteeing informed consent is a fundamental feature of respecting an individual’s autonomy, self-determination and human dignity in an appropriate continuum of voluntary health-care services. Informed consent in health, including (but not limited to) clinical practice, public health and medical research, is an integral part of respecting, protecting and fulfilling the enjoyment of the right to health as elaborated in article 12 of the ICESCR and enshrined in numerous international and regional human rights treaties and national constitutions. (A/64/272, Para.18)

Furthermore, informed consent invokes several elements of human rights that are indivisible, interdependent and interrelated. In addition to the right to health, these include the right to self-determination, freedom from discrimination, freedom from non-consensual experimentation, security and dignity of the human person, recognition before the law, freedom of thought and expression and reproductive self-determination. (A/64/272, Para.19). The report further states that successful HIV/AIDS testing is underpinned by conditions of counselling, informed consent and confidentiality. International guidelines recommend that public health legislation demand that HIV/AIDS testing be performed only on the basis of individual informed consent and grounded in an approach protecting human rights. (A/64/272, Para.33).