

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL AZE 1/2017

11 May 2017

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 25/2, 25/18 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the detention and conviction to two years of imprisonment of Mr. **Mehman Huseynov**, an Azerbaijani photojournalist and blogger, on charges of defamation against the police after having denounced being subjected to torture.

Mr. Mehman Huseynov was the subject of a previous communication sent on 26 June 2012 (AZE 4/2012), concerning allegations of detention and prosecution under charges of hooliganism in relation to his participation in campaigns calling for the respect of human rights in Azerbaijan and for his activities documenting human rights violations. We regret that no reply was received from your Excellency's Government to this letter.

Mr. Huseynov is a renowned photojournalist, blogger and human rights defender working to document cases of human rights violations and corruption in Azerbaijan. He ran a widely followed Facebook page where he frequently posted critical comments and reports on the Government of Azerbaijan. He is the Chair of the Institute for Reporters' Freedom and Safety, an Azerbaijani human rights organization that advocates for the freedom of expression. Mr. Huseynov is also the editor-in-chief of the SANCAQ, a socio-political magazine. His recent campaign, "Hunt for Corrupt Officials", documents alleged cases of government corruption.

According to the information received:

On 9 January 2017, at approximately 8:00 pm, in the centre of Baku, five unidentified security agents dressed in plainclothes forcibly dragged Mr. Huseynov to an unmarked vehicle. No arrest warrant was presented. His mouth was covered with tape and a bag was placed over his head. Mr. Huseynov was allegedly driven around for several hours and subjected to several forms of torture, including suffocation, physical attacks and electric shocks by Taser. He was then taken to an unknown destination where he was reportedly beaten by

eight unidentified persons. Mr. Huseynov was eventually brought to the Nasimi District Police Department where he lost consciousness and collapsed. An ambulance was called and he was given painkillers and sleep-inducers by way of injection which left bruises and blood stains that were visible when he was released the next day.

During the evening of 9 January 2017, Mr. Huseynov's lawyer contacted the police headquarters in Baku and was told that his client was not among their detainees. Family members and colleagues also repeatedly contacted the police following Mr. Huseynov's disappearance but were not informed of his arrest and detention. Mr. Huseynov was held incommunicado for over 12 hours in the 22<sup>nd</sup> Nasimi Police Station. His whereabouts were unknown until the early afternoon of 10 January 2017.

On 10 January 2017, Mr. Huseynov was presented before the Nasimi District Court in Baku and fined with 200 AZN (around 100 euros) for "disobeying the police", before being released that same day. During the closed hearing, Mr. Huseynov denounced having been subjected to torture the day before. After the court hearing, Mr. Huseynov gave an informal press conference outside of the courthouse where he informed the press that he had been abducted and tortured by police agents. On 1 February 2017, however, prosecutors in Baku declined to accept his criminal complaint against the police.

On 12 January 2017, a criminal complaint from the chief police officer for Baku's Nasimi district was filed, charging Mr. Huseynov with defamation for saying he had been tortured in custody. On 13 January 2017, the Ministry of the Interior issued a press release claiming that the allegations by Mr. Huseynov were groundless and intended to "cast a negative light on the police." However, the allegations of ill-treatment and torture were confirmed by an independent team of doctors from the Georgian Center for Psychosocial and Medical Rehabilitation for Torture Victims, which conducted medical and psychological examinations on Mr. Huseynov, in accordance with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

In the course of January, and despite being under trial, Mr. Huseynov continued to exercise his journalistic activities and published a series of video reports exhibiting some of the estates and villas owned by several Azerbaijani officials. More recently, on 27 February 2017, he published a video report in which he exposed in a satirical way the critical views of the Azerbaijani public regarding the appointment of President Aliyev's wife, Ms. Mehriban Aliyeva, as first Vice-President.

On 3 March 2017, the Surakhansky District Court in Baku ruled on the charges of defamation and found Mr. Huseynov guilty of "slander, which equates to an accusation of committing a very serious crime" under part 2 of Article 147 of the

Criminal Code of Azerbaijan and sentenced Mr. Huseynov to two years in prison. Mr. Huseynov was arrested that same day, and has remained in prison ever since.

The criminal prosecution and conviction of Mr. Huseynov is reported to take place in a context of increased pressure against critical expression. In the last months, Azerbaijani authorities have reportedly escalated their use of defamation as a criminal charge to target critics of the Government, particularly media workers. According to the information available, there are 13 journalists and bloggers currently detained in Azerbaijan.

Serious concern is expressed about the conviction to two years of imprisonment of Mr. Mehman Huseynov for having sought legal remedies and having denounced his subjection to torture during his arrest on 9 and 10 January 2017. Equal concern is expressed at the allegations of ill-treatment and torture, the reported lack of due process, and the reported lack of investigations into the allegations of torture. Further concern is expressed that, taken together, the above information appears to show a direct targeting of Mr. Huseynov for exercising his rights to freedom of opinion and expression, as well as his legitimate and peaceful activities in defence of human rights in Azerbaijan.

Moreover, concern is expressed at the use of criminal defamation provisions to target critical expression and the exercise of journalistic functions, in particular in matters of public interest. Furthermore, serious concern is expressed at the larger context of judicial harassment of journalists through prosecution on charges of defamation, which seriously hampers the independence of media in Azerbaijan by silencing journalists, restricting access to information, and limiting the free flow of ideas.

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.

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 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 information on the legal basis for Mr. Huseynov's arrest on 9 January 2017, and the reasons for holding him incommunicado overnight.
3. Please provide detailed information regarding the allegations of torture committed against Mr. Huseynov during his arrest from 9 to 10 January 2017, and the reasons for the prosecutor's office to dismiss his complaint on the matter.

4. Please also provide details concerning the legal basis for Mr. Huseynov's prosecution and conviction for defamation against Baku's Nasimi district police. In particular, please explain how these measures are legitimate under international human rights law, and specifically under Azerbaijan's obligations under article 19 of the International Covenant on Civil and Political Rights (ICCPR).
5. Please provide information as to the measures that are in place to ensure that Mr. Huseynov may report any instances of physical or psychological pressure exerted against him without fear of facing reprisals of any sort from the prison authorities.
6. Please indicate what measures have been taken to ensure that the legitimate right to freedom of expression is respected and that the physical and psychological integrity of those exercising this right is guaranteed.
7. Please provide information on the use of the crime of defamation against journalists and other persons expressing critical views against the Government through different media, including Facebook, and explain how this is compatible with Azerbaijan's obligations under article 19 of the ICCPR.
8. Please provide information on the measures adopted by your Excellency's Government to guarantee that journalists and human rights defenders can conduct their work without undue interference by the authorities and that any person can manifest their legitimate dissent and any opinion through social media, including Facebook.

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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the letter and the regular procedure.

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

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

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

Michel Forst  
Special Rapporteur on the situation of human rights defenders

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 take this opportunity to draw your attention to relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer to articles 7, 9 and 19 of the ICCPR, acceded by Azerbaijan on 13 August 1992, which establish the absolute prohibition of torture and of arbitrary detention, as well as the right to freedom of opinion and expression. Further, 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 was acceded by Azerbaijan on 16 August 1996. Article 12 of the CAT further requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT requires State parties to prosecute suspected perpetrators of torture.

In this context, Paragraph 7 (b) of Human Rights Council resolution 16/23 urges States to take note of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture. The Protocol contains internationally recognized standards and procedures on how to recognize and document symptoms of torture so that the findings may serve to inform judiciary and any other investigative bodies.

We also wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. This right applies online as well as offline. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 19 (3) of the ICCPR.

We would like to remind your Excellency's Government that the Human Rights Committee stated in its General Comment No. 34 that criminal sanction, in particular imprisonment for libel and defamation are not deemed proportional with an effective exercise of the right to freedom of expression, and recommended States to decriminalize defamation.<sup>1</sup>

We would like to recall the updated United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, 2015) which lay out generally accepted principles and practice in the treatment of prisoners and prison management.

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<sup>1</sup> Human Rights Committee, *General comment No. 34 Article 19: Freedoms of opinion and expression*, CCPR/C/GC/34, 2011, para 47.

We would also like to refer to 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 articles 1 and 2 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.

Likewise, we would like to bring to the attention of your 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;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these 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.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.