

Mandates of the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
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6 November 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 34/5 and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the **disciplinary proceedings pending against Mr. Yalchin Imanov**, reportedly in reprisal for his activities as human rights defender.

Mr. Imanov is a practicing human rights lawyer in Azerbaijan. He is registered to practice at the Sumgayit City Legal Advice Office and a member of the Azerbaijan Bar Association.

According to the information received:

On 8 August 2017, Mr. Imanov travelled to Gobustan high security prison to visit his clients, Abbas Huseynov and Taleh Bagirov, who are serving prison sentences there. His clients have been convicted by Baku Grace Crimes Court on 25 January 2017 and 21 July 2017 for mass disorder, terrorism, murder, plotting to overthrow the government, illegal purchase and storage of weapons, national, racial or religious hostility, and creation of armed units, among others. During the meeting, Abbas Huysenov informed Mr. Imanov that he had been allegedly subjected to torture in prison since his transfer from Baku Investigative Prison to the Gobustan prison on 22 July 2017. He told Mr. Imanov that he was put in solitary confinement, beaten with a baton, subjected to electric shocks to his genitalia, and handcuffed to an iron post. On the same day, Mr. Imanov visited his client Taleh Bagirov who informed him that he had been taken to a punishment cell on 30 July 2017 for 7 days for reasons unknown to him, and that he had been insulted by a prison officer.

On 8 August 2017, several media outlets contacted Mr. Imanov inquiring about the situation of his clients after he had left the prison. Mr. Imanov provided information on what he had been told by Mr. Bagirov and Mr. Huysenov regarding their ill-treatment and torture in prison. From 9 thru 10 August 2017, additional Azerbaijan media outlets, as well as human rights defenders and opposition leaders, published this information and disseminated their opinion on the case in the media, quoting Mr. Imanov.

On 9 August 2017, Mz. Imanov filed a complaint with the Office of the Prosecutor general, the Prison Service of the Ministry of Justice and the Ombudsman's office, requesting them to investigate the reports of torture at Gobustan prison and to take adequate measures. On 10 August 2017, Mr. Imanov filed a judicial review application with the Qaradag District court regarding the violation of Mr. Huysenov's right to physical and mental integrity, which includes the right not to be subject to torture and other forms of ill treatment. On 14 August 2017, Mr. Imanov lodged an appeal with the Baku Court of Appeals after the Aradag District court dismissed the complaint as inadmissible. The appeal was later dismissed by the appellate court on the same grounds.

On 10 August 2017, Ogray Mammadov, acting chief of the Prison Service of the Ministry of Justice, filed a complaint with the Azerbaijani Bar Association requesting it to initiate disciplinary proceedings against Mr. Imanov for disseminating false information about the alleged ill treatment suffered by his clients. On 6 September, Mr. Imanov was summoned to the Bar Association to provide his testimony, where he was shown the appeal of the Prison Service but was refused a copy, despite numerous requests. He was only permitted to take notes on the complaint's content.

According to the notes taken by Mr. Imanov, the Prison Service filed the complaint against him for, inter alia, "disseminating false and unfounded information regarding the torture of Taleh Bagirov and Abbas Huseynov in the media; creating an impression in the country that religious followers are pressured by the authorities and creating a negative public opinion about the work of the Prison Service; encouraging his clients to spread libelous statements, and voice opinions that do not reflect reality, thereby attempting to create instability and tensions in layers of society; encouraging the family of Taleh Bagirov to protest in front of the prison; spreading false reports on 8 August 2017 claiming his clients had been tortured; and encouraging the relatives of prisoners to attempt an illegal mass gathering in front of the administrative office of the Prison Service on 9 August 2017."

On 19 September, the Disciplinary Committee of the Azerbaijan Bar Association examined the case and decided to refer it to the Presidium of the Association for its final decision because it said it did not have the competence to examine the allegations. Mr. Imanov was not given a copy of the decision. The Presidium is expected to make a final determination by the end of September 2017.

According to information received, the threat of initiating disciplinary proceedings against Mr. Imanov may be considered as part of a broader crackdown on the activities of human rights defenders and civil society organizations in Azerbaijan, which allegedly started in 2014 and continues to date.

We wish to express serious concern regarding the disciplinary proceedings pending against Mr. Yalchin Imanov and the chilling effect that such proceedings may have on the independent exercise of the legal profession in Azerbaijan. We are particularly concerned about the alleged grounds leading to the filing of the complaint against Mr. Yalchin Imanov, which do not appear to be in compliance with international standards on the matter, and the allegations according to which the use of disciplinary proceeding appears to be a form of a broader attempt to silence those who criticize the authorities and expose human rights violations.

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 any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal ground for the complaint filed against Mr. Yalchin Imanov, and the current status of his disciplinary proceedings.
3. Please elaborate on the substance of the disciplinary proceedings brought against Mr. Yalchin, specifically, how the proceedings comply with the Basic Principles on the Role of Lawyers, in particular principles 27, 28 and 29.
4. Please provide the basis for refusing Mr. Yalchin a copy of the initial complaint filed against him and a copy of the decision of the Azerbaijan Bar Association to refer his case to the Presidium of the Association.
5. Please provide information on the measures that your Excellency's Government has taken, or intends to take, to ensure the independence of the legal profession and to enable lawyers and human rights defenders to perform their professional functions freely and without any intimidation, threat, harassment or improper interference.

We would appreciate receiving a response within 60 days.

While awaiting a reply, I urge your Excellency's Government to take all necessary measures to protect the independence of lawyers, including immediate steps to abandon the disciplinary proceedings. In this context, I wish to kindly request that your

Excellency's Government share a copy of this letter with the acting chief of the Prison Service, the Azerbaijan Bar Association and the Presidium of the Association.

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.

Michel Forst
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, the independence of the legal profession is prescribed, inter alia, in the International Covenant on Civil and Political Rights (ICCPR), acceded to by your Excellency's Government on 13 August 1992, and the Basic Principles on the Role of Lawyers.

Article 14 of the International Covenant on Civil and Political Rights provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to communicate with counsel of their own choosing. In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14(3)(b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. S/he should also be able "to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter" (CCPR/C/GC/32, para. 34).

We would also like to refer your Excellency's Government to the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990. Principle 13 provides that the duties of lawyers towards their clients include advising clients as to their legal rights and obligations, and assisting clients in every appropriate way, including taking legal action to protect their interests. Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. The Basic Principles also provide disciplinary proceedings initiated against lawyers be brought before an impartial disciplinary committee established by the legal profession, an independent statutory authority, or a court, and determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles (Principles 28 and 29).

We would like to also 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;
- 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.