

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL TKM 2/2017

15 November 2017

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 rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of an attack on the home of Ms. **Khalida Izbastinova**, the mother of human rights defender, Mr. **Farid Tukhbatullin**.

Mr. Farid Tukhbatullin is the Director of the human rights organisation, Turkmen Initiative for Human Rights (TIHR), which is based in Austria. The TIHR monitors and reports on human rights violations in Turkmenistan, with a primary focus on monitoring national minorities' rights, freedom of association, freedom of expression, child labour and the education system in Turkmenistan.

Mr. Tukhbatullin has been living in Austria since 2003 due to the intensity of threats and intimidation he was facing in Turkmenistan as a result of his human rights activities. Since the 1990s, Mr. Tukhbatullin has been actively engaged in environmental and human rights activities in Turkmenistan. He was a leading member of the Dashoguz Ecological Club, an organization which carried out awareness raising, monitoring and advocacy. In December 2002, he was arrested on charges of allegedly "concealing a crime" and illegally crossing the border between Turkmenistan and Uzbekistan. These charges were reportedly related to his participation in a meeting organized by the International Helsinki Federation for Human Rights and Memorial Human Rights Center in Moscow to discuss the human rights situation in Turkmenistan.

Previous allegations regarding an alleged assassination plot against Mr. Tukhbatullin have been addressed in a communication letter sent by the independent experts to your Excellency's Government on 1 November 2010 (Reference – TKM 2/2010). We regret not having received any response from your Excellency's Government as of today.

According to new information received:

On the night of 29 October 2017, several unidentified persons threw stones and bricks at the windows of Ms. Izbastinova's apartment in the city of Dashoguz in

northern Turkmenistan, resulting in several broken windowpanes. Ms. Izbastinova did not sustain any injuries but was reportedly severely distressed by the incident and needed to have an ambulance called for her. It is also reported that police arrived at the scene of the incident in order to question Ms. Izbastinova about the attack. A police investigation into the attack has allegedly been opened and neighbours were questioned in relation to the investigation. The results of the investigations are reportedly not known as of yet.

The attack against Ms. Izbastinova has allegedly been in retaliation against the human rights activities of her son, Mr. Tukhbatullin. This attack is not an isolated incident but falls into a broader, long-term pattern of attacks and intimidation directed against Mr. Tukhbatullin, as well as against members of his family who reside in Turkmenistan. In late 2015, following Mr. Tukhbatulin's request, Austrian police provided the defender with temporary protection and carried out investigations regarding the threatening online messages.

In addition, in August 2017, after posting a satirical video about the President of Turkmenistan, the website of the TIHR was the target of a severe distributed denial of service (DDoS) attack which occurs when multiple systems are used to target a single system with a virus for the purposes of hacking the target's system. It is alleged that the attack may have been carried out by the security services of Turkmenistan.

Serious concern is expressed at the attack against Ms. Izbastinova. We cannot dismiss the likelihood that Ms. Izbastinova was targeted because of the human rights activities of her son, who has also been subjected to long term threats and intimidation due to his peaceful and legitimate work as a human rights defender. Serious concern is expressed as to the physical and psychological integrity of Ms. Izbastinova who is elderly and lives alone, thereby making her particularly vulnerable to future attacks.

Additional concern is expressed at the DDos attack against the TIHR of August 2017. Such an attack is particularly worrying as it curtails TIHR's ability to carry out its legitimate work on the protection and promotion of human rights in Turkmenistan. In addition, this attack compromises the security and confidentiality of the organisation's data, thereby potentially divulging personal information and endangering representatives of civil society and human rights defenders cooperating with TIHR.

We also express our overall concern at the fact that the attack on Ms. Izbastinova subscribes itself into a broader pattern of other cases of persecution of human rights defenders, social media commentators, journalists and other critical voices in Turkmenistan which are being reported to us through various sources.

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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide an update on the status of the investigations which are reportedly underway in relation to the attack against Ms. Izbastinova.
3. Please provide information on any protective measures implemented by the authorities to ensure the physical and psychological integrity of Ms. Izbastinova and protect her from future attacks.
4. Please provide information on any investigations which are underway or which have been carried out in the past in relation to the fact that the threatening online messages directed against Mr. Tukhbatullin could have originated from IP addresses based in Turkmenistan.

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

Annalisa Ciampi
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

Article 17 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Turkmenistan on 1 May 1997, provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation and that everyone has the right to the protection of the law against such interference or attacks. Article 19 provides that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. In addition, we wish to bring to the attention of your Government article 25 (a) of the ICCPR, which provides for the right to take part in the conduct of public affairs without any discrimination or unreasonable restriction. Articles 21 and 22 of the ICCPR provide for guarantee the rights to freedom of peaceful assembly and of association, respectively.

In its General Comment No. 31, the Human Rights Committee observed that there is a positive obligation on States to ensure protection of Covenant rights of individuals against violations by its agents and by private persons or entities, which includes the duty to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice. A failure to investigate and bring perpetrators of such violations to justice could, in and of itself, give rise to a separate breach of the ICCPR (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18).

Resolution 24/5 of the Human Rights Council reminds States of their “obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law”.

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 5 point a) everyone has the right, individually and in association with others, at the national and international levels to meet or assemble peacefully;

- 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.

We also refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.