

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:
UA AZE 5/2017

29 November 2017

Excellency,

We have the honour to address you in our capacity 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 the decision of 14 November 2017 by the Administrative Economic Court to freeze the bank account of the investigative journalist, Khadija Ismayilova, which together with the previously imposed travel ban appears to be aimed at targeting her ability to continue her work as a journalist.

Ms. **Khadija Ismayilova** is an investigative journalist and human rights defender who has written a number of investigative reports on corruption and reported extensively on the situation of political prisoners in Azerbaijan and advocated for their release. She has worked at the Azadliq Radiosu, a branch of Radio Free Europe/Radio Liberty in Azerbaijan. Following her criticism of the authorities, she was arrested on 5 December 2014 and was in September 2015 sentenced to seven and a half years in prison. On 25 May 2016, Ms. Ismayilova was released following a decision by the Supreme Court to commute her sentence into a three and a half year suspended term. The Ministry of Justice nevertheless imposed travel restrictions on Ms. Ismayilova for a period of five years. Under the terms of her probation, Ismayilova is required to reside in Baku and is forbidden from traveling abroad for five years without official permission. Her attempts to lift the travel ban for attending international events have been rejected by local courts on four occasions.

She previously received the Gerd Bucerius Free Press of Eastern Europe Award in May 2013; the Global Shining Light Award in October 2013; the Courage of Journalism Award from International Women's Media Foundation in October 2012. She has been invited to speak at a seminar for Right Livelihood Award Laureates on 1 December 2017, and receive her Award in Stockholm on the same day. She has also been invited to a felicitation and debate event by the Graduate Institute of Geneva on 6 December 2017.

Concerns at the arrest and conviction of Ms. Ismayilova were raised most recently in a communication dated 8 November 2017, by various Special Rapporteurs (AZE 4/2017), as well as in two earlier communications of 29 May 2015 (AZE 2/2015) and 1 February 2013 (AZE 2/2013). We thank your Excellency's Government for the replies of 11 September 2015 and 23 April 2013, but remain concerned at the situation of Ms. Ismayilova.

According to the information received:

On 14 November 2017, Ms. Khadija Ismayilova received a letter from the Administrative Economic Court informing her about the Court's decision of 8 November to freeze her bank account.

The decision of the Court was made following a request by the tax authorities following their dispute with Ms. Ismayilova about tax evasion. This case is scheduled to be considered in court on 27 November 2017. It has been alleged that the case has been brought on false grounds and is used to target the work of Ms. Ismayilova as an investigative journalist.

It has been alleged that the asset freeze is an escalation of the reprisals against the journalistic work of Ms. Ismayilova, and that it in addition to restrict her ability to receive the international award money also will further impede her ability to continue her work.

We express concern at the recent court decision to freeze the bank account of Ms. Ismayilova, which effectively deprives her of the ability to continue her journalistic work. We reiterate our concerns at the allegations that the legal cases brought against Ms. Ismayilova on the basis of financial crimes are aimed to target her work as an investigative journalist.

Without prejudice about the above allegations, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee Ms. Ismayilova's right to freedom of movement and freedom of expression, in accordance with article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Azerbaijan 13 August 1992. In this regard, we would like to refer to the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with the criteria established by international human rights standards. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality. We would similarly like to recall that, while national security is a legitimate basis for restricting the right to freedom of expression under article 19(3), it is not enough to claim it as a justification to pursue illegitimate purposes such as silencing critical voices. Governments have to demonstrate that the measures adopted are necessary to achieve a

legitimate objective, and proportional in the means used to implement them. In any case, article 19(3) may never be invoked as a justification for the hindering of any advocacy of human rights (CCPR/C/G/34).

Moreover, we would 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, 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.

In particular, we wish to note that articles 5 and 6 of the Declaration reiterate 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. We would also like to refer to provisions under article 12, which provides that State must 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 or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Ms. Ismayilova in compliance with international instruments.

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 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 information on the legal basis for the court decision to issue the order freezing the bank account of Ms. Ismayilova and explain how this is compatible with the standards of international human rights law.

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 responsible of the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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