

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 rights to freedom of peaceful assembly and of association; 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:
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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 rights to freedom of peaceful assembly and of association; 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, 34/18, 32/32, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of arbitrary arrest and detention of Ms. **Elena Semenova**.

Ms. Elena Semenova is a human rights defender and Chairperson of the Public Monitoring Commission (PMC) in the Pavlodar region of Kazakhstan. In this capacity, Ms. Semenova advocates for the need to investigate allegations of torture and ill-treatment against detainees in Kazakhstan.

Ms. Elena Semenova is actively engaged in the protection of the human rights of persons in detention and in monitoring of the conditions of detention. She has brought approximately 150 cases of detainees to the attention of the authorities, namely the Prosecutor's Office, the Ministry of Interior Affairs and the Administration of the President. Some of these cases involved allegations of torture and cruel, inhuman or degrading treatment or punishment.

She is also the head of the public association Leave the People their Housing, which campaigns, litigates and advocates for the housing and property rights of individuals who have lost their homes and lands due to forced evictions.

According to the information received:

On 9 October 2015, an official of Pavlodar's prison system urged the Department of Internal Affairs of Pavlodar to open a criminal case against Ms. Semenova following comments she had made on social media alleging that officers of penitentiary facilities of Pavlodar province were beating, torturing, raping, and intentionally humiliating inmates and forcing them to clean the shoes and clothing

of the prison's administration staff. According to the investigative body, Ms. Semenova's comments posed a danger to "public order among inmates". Ms. Semenova was interrogated several times in relation to the charge of "knowingly spreading false information" via social media.

Ms. Semenova defended her comments, saying that she had proof that torture had taken place, which she had sent to the relevant authorities. She said she chose to go public with the information after not having received any response.

Ms. Semenova's case received media attention and it was alleged that the goal of the criminal prosecution was possibly to bar Ms. Semenova from the Public Oversight Commission and the National Preventative Mechanism, which had until then granted her access to the detention facilities.

On 25 October 2016, Ms. Semenova and another human rights defender were forcefully arrested and detained by the officers of the Directorate for Combating Organised Crimes of the Republic of Kazakhstan while protesting the ongoing judicial harassment and the arbitrary detention of two human rights defenders. Ms. Semenova and the other human rights defender were subsequently tried and found guilty under Part 1, Article 488 of the Administrative Offences Code of Kazakhstan (unauthorised holding of public assembly), and ordered to pay a fine of 180 euro by the Atyrau City Court.

Between 2016 and 2018, the authorities repeatedly prohibited Ms. Semenova from visiting prisons.

From 3 to 5 July 2018, Ms. Semenova took part in a number of meetings with Members of the European Parliament in Strasbourg. During these meetings, she presented allegations of torture and cruel, inhuman or degrading treatment or punishment perpetrated by State officials against detainees in Kazakhstan. Among these allegations, she raised concerns regarding the beatings, rapes, humiliation, as well as the denial of medical assistance and even the killings of detainees in Kazakhstan.

On 20 July 2018, Ms. Semenova was arrested at her home by three police officers. She managed to send an SMS to a colleague indicating "I'm being taken to the Department of Internal Affairs. They came for me". She was interrogated throughout the morning and was only granted access to her lawyer after lunchtime. Her interrogation continued until 8.00 p.m., when she was taken to her home.

Police officers also searched Ms. Semenova's house. They confiscated her computer, her mobile phone and documents, including prisoners' testimonies of the torture they endured.

Ms. Semenova was charged with “spreading false information” under Article 274 of the Criminal Code of Kazakhstan in relation to the statements that she had made to members of the European Parliament.

Although Ms. Semenova is no longer in detention, a travel ban has been imposed on her and the criminal investigation against her is ongoing. No date for a trial has yet been scheduled.

Serious concern is expressed at the alleged arbitrary arrest of and charges against Ms. Semenova, as well as her previous sentencing, which all appear to be in retaliation for her peaceful and legitimate human rights work and exercise of her rights to freedom of expression regarding the conditions of detention in Kazakhstan. We are concerned about authorities resorting to the criminalisation of her activities related to the exercise of the right to freedom of expression, and the right to peaceful assembly and association.

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 grounds for the arrest and detention and the judicial procedures against Ms. Semenova, and explain how these measures are compatible with international human rights norms and standards, in particular with articles 9, 10 and 14 of the ICCPR.
3. Kindly explain the rationale for imposing a travel ban on Ms. Semenova, and how this is compatible with international human rights norms and standards.
4. Please indicate what measures have been taken to ensure that Kazakh prisons are in compliance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988.
5. Please indicate what measures have been taken to ensure that human rights defenders in Kazakhstan are able to carry out their human rights activities, including the exercise of their right to freedom of expression, in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

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 allegation 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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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 draw your attention to the following human rights standards:

The above allegations appear to be a violation of articles 9, 10, 14, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Kazakhstan on 24 January 2006.

Article 9 of the ICCPR states that everyone has the right to liberty and security of the person and that no one shall be subject to arbitrary arrest or detention, except on grounds established by law and following legal procedures. Paragraph 4 of the same article states that anyone deprived of his liberty is entitled to bring proceedings quickly before a court, for it to determine the legality of such detention or to order the release of the person concerned without delay. The Human Rights Committee has established in its General Comment N° 35 on article 9 that an arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant, including freedom of opinion, expression, assembly and association, is arbitrary (CCPR/C/GC/35, para. 17).

Articles 10 and 14 of the ICCPR state that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and that everyone charged with a criminal offence shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, as well as to defend himself in person or through legal assistance of his own choosing.

Articles 19 and 22 of the ICCPR guarantee the rights to freedom of expression and freedom of association.

We would like to remind your Excellency's Government that any limitation to the right to freedom of expression must meet the criteria established by the Covenant, in particular under article 19 (3). Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Article 22 states that the right of association should be recognized, and that no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests

of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

We would also like to refer to Human Rights Council resolution 24/5 (operative paragraph 2), in which the 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.”

Furthermore, we would like to bring to the attention of your Excellency’s Government articles 6 (a and b) and 12, paragraphs 2 and 3 of the UN Declaration on Human Rights Defenders which provide that everyone has the right to know, hold, publish and disseminate information about all human rights and fundamental freedoms and 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.

Finally, we wish to draw your attention to principles 1, 3, 6, 7, 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which states that all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person, that there shall be no restriction upon the any of the human rights of persons under any form of detention or imprisonment, that no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, that any person who has ground to believe that a violation has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved, and that a detained person or his counsel shall have the right to make a request or complaint regarding their treatment to the responsible authorities.