

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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

REFERENCE:
UA IRN 13/2018

19 October 2018

Excellency,

We have the honour to address you in our capacity 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, pursuant to Human Rights Council resolutions 33/30, 34/18, 33/9, 34/5 and 37/30.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the deteriorated health situation of Iranian human rights defender **Mr. Arash Sadeghi**, currently serving a 15-year prison sentence for charges including "spreading propaganda against the system", "gathering and colluding against national security" and "insulting the founder of the Islamic Republic".

Concerns at the use of repressive legislation to criminalise Mr. Sadeghi's legitimate exercise of the right to freedom of expression formed the subject of previous communications sent by Special Procedures dated 23 March 2017 (case no. 9/2017), 27 October 2016 (case no. 28/2016) and 22 July 2016 (case no. 21/2016).

While we acknowledge receipt of letters that your Excellency's Government sent to us dated 10 July 2017, 17 February 2017 and 28 December 2016 concerning Mr. Sadeghi, we regret that these letters did not detail the measures taken to ensure the physical and psychological integrity of Mr. Sadeghi. As detailed below, this is especially concerning given that new information suggests Mr. Sadeghi's health status is seriously deteriorating. We also regret that your Excellency's Government did not provide information on how the charges in the case of Mr. Sadeghi met the standards of international human rights law, and on the measures taken to provide him with the guarantees of due process and fair trial, and effective access to a counsel of his choosing as established in international human rights law.

Mr. Sadeghi was also the subject of the Working Group's Opinion No. 19/2018 (Islamic Republic of Iran), adopted on 24 May 2018. The Working Group found that the deprivation of liberty of Mr. Sadeghi was arbitrary, in contravention of articles 2, 7, 9, 10, 11(1), 19 and 20 of the Universal Declaration of Human Rights (UDHR) and articles 2(1), 9, 14, 19, 21 and 26 of the International Covenant on Civil and Political Rights (ICCPR), and falls within categories II, III and V of the categories applied by the Working Group. The Working Group requested the Government to take the necessary steps to remedy the situation of Mr. Sadeghi without delay and bring it into conformity with the standards and principles in the UDHR and ICCPR. The Working Group considered that, taking into account all the circumstances of the case, especially the risk of harm to Mr. Sadeghi's integrity, the adequate remedy would be to release Mr. Sadeghi immediately, and accord his enforceable right to compensation in accordance with international law.

According to information received:

On 18 October 2017, Mr. Sadeghi was transferred from Tehran's Evin Prison to Raja'i Shahr Prison in Karaj. Mr. Sadeghi was reportedly beaten during the transfer.

Since early 2017, Mr. Sadeghi has experienced persistent pain in his elbow and shoulders. Despite these symptoms, he was allegedly not referred for diagnostic tests until May 2018.

In late May 2018, Mr. Sadeghi underwent an x-ray in the Raja'i Shahr prison clinic and soon afterwards a Magnetic Resonance Imaging (MRI) scan at a facility outside of prison. Mr. Sadeghi was then transferred to see a medical expert specialising in cancer treatment. Despite Mr. Sadeghi's repeated requests, the medical staff refused to provide Mr. Sadeghi with information about his condition. In August 2018, he was formally diagnosed with bone cancer.

On 12 September 2018, Mr. Sadeghi had surgery. Doctors removed a number of bone tumours, and samples were also taken for further tests. As per medical advice, Mr. Sadeghi required one hour in the recovery room alone after surgery, however, it is reported that prison guards prematurely removed him while he was unconscious and chained him to a hospital bed. The guards allegedly surrounded Mr. Sadeghi's bed and prevented medical staff from performing post-operation checks and treatment. Mr. Sadeghi remained chained to his hospital bed for three days, and suffered bedsores as a result.

On 15 September 2018, the authorities transferred Mr. Sadeghi back to Raja'i Shahr Prison against the advice of medical experts that he needed to remain in hospital for 25 days after surgery so that relevant doctors could assess what

further treatment was required. Reportedly, Mr. Sadeghi developed an infection owing to his premature release from hospital.

On 22 September 2018, Mr. Sadeghi was scheduled to undergo a follow-up review at the hospital, by his surgeon. However, he missed this review due to prison officials transferring him to the hospital in the afternoon rather than in the morning. It is understood he developed an infection owing to his premature release from hospital, and he is yet to have been afforded a visit from a specialist following his surgery. Mr. Sadeghi was further due to meet with a specialist on 6 October 2018, but the appointment was cancelled by the prison authorities. On 13 October 2018, he was finally allowed to visit the hospital. During the visit, prison guards reportedly handcuffed and assaulted him. He sustained a fracture to his left wrist during the assault. He was subsequently informed by medical professionals that he was too weak to undergo chemotherapy and that conditions in the prison were not conducive for recovery after such treatment. Subsequently, Mr. Sadeghi was informed that he should be monitored for new tumours.

Further concerns have been raised about insufficient heating in the prison in which Mr. Sadeghi is located, which are exacerbated by open windows exposing him to cold temperatures. In addition, he has not been provided with the diet recommended by medical professionals following his surgery.

Mr. Sadeghi has applied twice for release since his operation, but officials have refused the requests despite medical professionals advising that he should be released in light of his deteriorating health condition and need for specialised treatment that is unavailable in prison. It has been further reported that access to his medical files has been blocked by prison authorities.

We express grave concern about the physical and mental integrity of Mr. Sadeghi whilst in prison. Specifically, we express serious concerns about the alleged obstruction, delay and denial of medical care for Mr. Sadeghi, particularly in light of his serious and deteriorating health condition. We also would like to express concern regarding the conditions of detention in the Raja'i Shahr Prison to where Mr. Sadeghi was recently transferred. We reiterate our concerns that the legal basis for the conviction and imprisonment of Mr. Sadeghi is incompatible with Iran's obligations under international human rights law.

Without making any judgment as to the accuracy of the information made available to us, the above allegations appear to be in contravention of provisions of international law, in particular the right to physical and mental health and the obligation of States parties to refrain from denying or limiting equal access to health services under article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which was ratified by Iran on 24 June 1975. In addition, we would like to refer

your Excellency's Government to the United Nations Standard Minimum Rules for the Treatment of Prisoners, or the Mandela Rules, which further establish States' responsibility to provide access to healthcare for prisoners, including prompt access to medical attention in urgent cases and the transfer of prisoners requiring specialised treatment to specialised institutions or civil hospitals. All prisoners, or third parties appointed by them, should be granted access upon request to their relevant medical files. (see rules 22–27, 52, 62 and 71, para. 2).

We would also like to take this opportunity to refer your Excellency's Government to article 502 of the Iranian Criminal Code, which states that “[i]f a prisoner is suffering from physical or mental illness and his imprisonment would make his illness worse or delay his recovery, the judge can postpone the sentence being served until the prisoner regains his health after consultation with his physician.”

Furthermore, we take the opportunity to reiterate our serious concern regarding the arrest, detention and conviction of Mr. Sadeghi, which appears to be directly related to his human rights work and the legitimate exercise of his right to freedom of expression, as guaranteed under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Iran on 24 June 1974. Article 19(3) requires that any restriction on the right to freedom of expression is provided by law, serves a legitimate purpose, and is necessary and proportional to meet a legitimate objective. For a restriction to be “provided by law”, it must “not confer unfettered discretion for the restriction of freedom of expression on those charged with its executions (CCPR/C/GC/34). We express concern that the legal basis upon which Mr. Sadeghi's imprisonment is based do not meet the provided by law requirement as it is overbroad and incompatible with the values of the ICCPR. We are furthermore concerned at the conflation of the legitimate exercise of freedom of expression with national security crimes. The use of national security and counter-terrorism as justifications to restrict the right to freedom of expression without meeting the strict threshold established by article 19(3) of the ICCPR represents a measure that is incompatible with Iran's obligations under international human rights law.

Moreover, we express concern at the lack of due process and fair trial guarantees, notably as a consequence of the serious restrictions placed on his legal defence, including intimidation and various obstacles faced by the lawyer of Mr. Sadeghi, as well as the alleged pressure exerted by security authorities on the courts adjudging the case.

We would also like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of Mr. Sadeghi not to be deprived arbitrarily of liberty, to fair proceedings before an independent and impartial tribunal, to freedom of expression, to freedom from torture and cruel, inhuman or degrading treatment and to non-discrimination in accordance with articles 7, 9, 14, 19 and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which Iran is a State party, and

articles 2, 5, 9, 10 and 19 of the Universal Declaration of Human Rights (UDHR). We would like to remind your Excellency's Government that any limitation on the right to freedom of expression must meet the high standard established under Article 19(3) of the ICCPR. We also reiterate the statement by the Human Rights Committee in General Comment 34 that article 19(3) may never be invoked as a justification for the suppression of any advocacy concerning human rights (CCPR/C/G/34).

With regard to the alleged connection between the apparent violations and the individuals' human rights work, 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 articles 1, 2, 6, 8 and 12.

Finally, we would like to reiterate the call of the Working Group on Arbitrary Detention (Opinion 19/2018) to release Mr. Sadeghi immediately, and accord him an enforceable right to compensation in accordance with article 9(5) of the ICCPR. In view of the urgency of the matter in light of the risk of harm to Mr. Sadeghi's health, we call upon Your Excellency's Government as a matter of urgency to proceed with the immediate release of Mr. Sadeghi.

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 Mr. Sadeghi 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 about the reason for denying the release of Mr. Sadeghi on health grounds as recommended by medical professionals.
3. Please provide information about the legal basis for denying Mr. Sadeghi full access to his medical records.
4. Please provide information related to the measures taken by your Excellency's Government to ensure the physical and mental integrity of Mr. Sadeghi while in detention, especially following his diagnosis and subsequent

surgery. Please similarly provide information on the conditions of his detention and the state of his physical and mental status at present.

5. Please provide further information about the legal basis for the arrest and detention of Mr. Sadeghi, and the evidence used to substantiate the charges brought against him.
6. Please provide detailed information on the measures taken to provide to Mr. Sadeghi the guarantees of due process and fair trial, and effective access to a counsel of his choosing as established in international human rights law, and in particular articles 9 and 14 of ICCPR.

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 may publicly express our concerns in the near future as, in our view, the information upon which the press release would 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 would indicate that we have been in contact with your Excellency's Government to clarify the issues 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.

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

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Michel Forst
Special Rapporteur on the situation of human rights defenders

Javaid Rehman

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran