

Mandates of the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA BLR 4/2019

20 March 2019

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on freedom of religion or belief; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 31/16 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged imminent deportation of Iranian national Mr **Mehrdad Mohammed Jamshidian** from Belarus to Iran **where he would be at risk of execution and torture or other cruel, inhuman or degrading treatment.**

According to the information received:

Mr. Mehrdad Mohammed Jamshidian has been residing in Belarus since 1993. In 2002 Mr. Jamshidian converted to Christianity, which is considered a crime of apostasy in Iran and possibly punishable by death. In recent years, Iranian courts have repeatedly imposed the death penalty for apostasy.

On 9 December 2012, the Iranian authorities allegedly issued an arrest warrant against Mr. Jamshidian on charges of murder of family members. Persons affiliated to Mr. Jamshidian view the case as politically motivated as Mr. Jamshidian's murdered brother was an opposition politician in the Green Revolution party. The crime of murder is also punishable by a mandatory death penalty in Iran, subject only to reduction of the sentence by the victim's next-of kin.

On 18 February 2013, a request for extradition was submitted by the Iranian authorities and on 5 March 2013 Mr. Jamshidian was transferred to the pre-trial detention facility number 1 of Minsk city for the purpose of extradition. In May 2013 he was released due to the failure of the Iranian authorities to provide the documents and guarantees requested by Belarus under the extradition procedure.

In August 2013, Mr. Jamshidian submitted an asylum request in Belarus, however the Citizenship and Migration department rejected his request in 2014, noting that he had failed to provide sufficient evidence of his conversion and risk of

persecution. The department also refused Mr. Jamshidian's subsidiary protection claim despite acknowledging he might face the death penalty if returned to Iran.

On 23 June 2014, Mr. Jamshidian appealed the decision of the Citizenship and Migration department, nonetheless the court rejected his appeal in August 2014.

On 14 June 2018, Mr. Jamshidian was arrested for not possessing any identification documents and has been placed in custody in the Temporary Detention Centre in Minsk. Mr. Jamshidian has not been able to renew his Iranian passport allegedly due to his fear of being abducted by the Iranian authorities from the territory of the Iranian Embassy and forcibly returned to Iran. On 28 February 2019, the Iranian Embassy has issued a return certificate on the basis of a request made in June 2018 by the Belarusian authorities in order to ensure his return to Iran. Mr. Jamshidian has been held in administrative detention since June 2018. On July 8, 2018, he suffered a heart attack in detention and is currently in need of medical follow up.

On 7 March 2019, the Head of the Moscow District Department of Internal Affairs in Minsk issued an administrative sanction that results in an order to deport Mr. Jamshidian for the administrative offense of residing in Belarus without identification documents, in violation of the rule on the stay of foreign national and stateless persons No. 73 of 20 January 2006. On 18 March 2019 Mr. Jamshidian has appealed this administrative decision to the Moscow District Court of Minsk, however the appeal has no suspensive effect and Mr. Jamshidian is still at imminent risk of being returned to Iran.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned that the forcible return of Mr. Jamshidian to Iran for an administrative offense would put him at serious risk of violation of his human rights to life, liberty, personal security, to be free from torture, to a fair trial and to freedom of religion as guaranteed in the Articles 6,7,9,14,18 of the International Covenant on Civil and Political rights ratified by Belarus on 12 November 1973.

We would like to call on your Excellency's Government to consider the view of the United Nations Human Rights Committee on the specific case of Mr. Jamshidian (view **CCPR/C/121/D/2471/2014**) including **CCPR/C/121/D/2471/2014/Corr.1**. The Committee concluded that Belarus would be in violation of Article 6 and 7 of the ICCPR should it expel Mr. Jamshidian to Iran where he would be at risk of torture, the death penalty and would not have the guarantees of a fair trial.

In view of the urgency of the matter, we would respectfully urge your Excellency's Government not to expel Mr. Jamshidian to Iran where he may be at risk of torture and possibly death, and to take the appropriate measures to ensure that a complete risk analysis is made by the relevant authorities in accordance with

international human rights standards and taking into account the views of the Human Rights Committee.

The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is codified in Articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Belarus on 13 March 1987. Article 3 of the CAT provides that, “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”; and that, “[f]or the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”. In this case, there are serious reasons, based on past evidence, to believe that there are serious grounds to believe that Mr. Jamshidian’s life, personal security and physical and mental integrity will be at risk.

This absolute prohibition against refoulement in the CAT is stronger and strengthens the same prohibition in **refugee law**, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under Article 33 of the 1951 Refugee Convention or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee or asylee status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed.

We also like to underline that the duty to respect and ensure the right to life requires States parties to refrain from deporting, extraditing or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists that their right to life under Article 6 of the ICCPR would be violated (CCPR/C/GC/36).

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 the Mr. Jamshidian in compliance with international human rights and refugee law.

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 information and comment you may have on the above-mentioned allegations.

2. Please provide information on the current status of the deportation order against Mr. Jamshidian.
3. Please provide information on the factual and legal basis that have been used to justify ordering the deportation of Mr. Jamshidian pursuant to a decision taken in the framework of the administrative procedure
4. Please provide detailed information on how the assessment of the risks he faces, both in terms of procedural safeguards, and analysis of the country of return situation, have been undertaken at every level to ensure that the individual will not be subjected to violations of his fundamental rights and freedoms upon return and how the views of the Human Rights Committee were taken into account in the risk assessment.
5. Please provide information related to the medical treatment received by Mr. Jamshidian while in detention.

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 this case the near future as, in our view, the information at hand is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential human rights implications of the above-mentioned allegations. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment