

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

REFERENCE:
AL KAZ 1/2019

9 April 2019

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 and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18 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 detention and illegal expulsion of human rights observers Ms. **Lyudmila Voloshina** and Mr. **Valerii Iavtushenko** from Kazakhstan.

Ms. Voloshina and Mr. Iavtushenko are members of a human rights observation mission to Kazakhstan organised by the Italian Federation for Human Rights. The organisation has been facilitating observation missions to Kazakhstan since April 2018 in cooperation with members of parliament from different European countries, aimed at documenting human rights abuses and providing assistance to the government of Kazakhstan in improving the state of human rights in the country.

According to the information received:

Ms. Lyudmila Voloshina and Mr. Valerii Iavtushenko participated in a human rights observation mission that began on 1 February 2019 and was meant to last until 16 February 2019. The purpose of their visit had been indicated as "human rights monitoring mission" in their migration cards when they entered the country. The mission focused on trial observations, cases of pressure on judges, the situation of political prisoners, incidents of torture and violations of the freedoms of expression and freedom of peaceful assembly.

After following cases in other parts of the country, Ms. Voloshina and Mr. Iavtushenko arrived in the capital on 14 February 2019, where they were supposed to attend a series of meetings with EU diplomats. Before these meetings could take place, Ms. Voloshina was arrested at her hotel by the Migration Office and taken to an unknown location. Mr. Iavtushenko, together with a local lawyer, was detained by the same authorities on his way to the Ukrainian consulate, where he wanted to request an intervention on behalf of Ms. Voloshina.

The two human rights observers were deprived of their cell phones and not granted any contact to the outside world for over ten hours, not even to contact

their lawyers. Moreover, Mr. Iavtushenko did not receive any water or food during that time. The Ukrainian Consul, who was not allowed to visit or contact them, later obtained information according to which the two were being held in a Migration Office facility in Imanova Street. During their interrogations, they were asked about the details of their mission.

During the court hearings of the administrative litigation process which took place after midnight of the same night, they were not allowed to choose their own legal representation. They were convicted of “inconsistency with the activities carried out with the declared purpose of arrival”, despite the fact that they had indicated their purpose upon arrival in Kazakhstan correctly.

On the morning of 15 February 2019, Ms. Voloshina and Mr. Iavtushenko were released and escorted to the airport where they had to board a plane to Almaty and from there took a flight to Kyiv. Before leaving the country, law enforcement officials asked them never to participate in a mission again.

The lawyers of Ms. Voloshina and Mr. Iavtushenko are preparing an appeal.

We express our serious concern at the detention and expulsion of Ms. Lyudmila Voloshina and Mr. Valerii Iavtushenko which seems to be directly linked to their participation in a human rights observation mission to Kazakhstan. We are equally concerned that they were not allowed to contact their lawyer and the Ukrainian consulate. Further concern is expressed regarding the legal and factual basis of their expulsion and its consequences for the work of human rights observers in Kazakhstan.

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 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 information on the legal procedure and grounds invoked for detaining and expelling Ms. Lyudmila Voloshina and Mr. Valerii Iavtushenko from Kazakhstan, and how these are compatible with the obligations of the Government of Kazakhstan under international human rights law.
3. Please provide information as to why Ms. Lyudmila Voloshina and Mr. Valerii Iavtushenko have been prevented from engaging with their legal representatives and the Ukrainian Consul while in detention and explain how

this is in line with international human rights standards, including article 14 of the International Covenant on Civil and Political Rights.

4. Please provide information as to what steps have been taken to ensure that human rights defenders in Kazakhstan, including human rights observers, are able to carry out their peaceful and legitimate work in a safe and enabling environment, free from any physical, judicial or other harassment.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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

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:

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. Any restriction to freedom of expression must meet the threshold established under article 19(3) of the ICCPR, that is, be provided by law and be necessary and proportionate for the protection of the rights or reputation of others, for national security of public order (ordre public) or for the protection of public health or morals.

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.

We would also 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.

Finally, we would like to bring to the attention of your Excellency's Government Article 6 (a) of the UN Declaration on Human Rights Defenders which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.