

Mandates of the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the human rights of migrants

REFERENCE:
AL CYP 2/2019

21 October 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 34/5 and 34/21.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest of human rights defender Doros Polykarpou and the police investigation against him in connection with his activities in defense of the rights of migrants.

Mr. Doros Polykarpou is the Executive Director of Action for Support, Equality and Antiracism – KISA, an organisation that provides support to migrants and works to combat racial discrimination and xenophobia in Cyprus.

Mr. Doros Polykarpou was the subject of two previous communications sent by various Special Procedures mandate holders, respectively dated 20 July 2011 (case reference CYP 1/2011) and 5 June 2014 (case reference CYP 3/2014), the latter including allegations of acts of intimidation and reprisals for Mr. Polykarpou's cooperation with the UN, its mechanisms and representatives in the field of human rights. We acknowledge receipt of the responses from your Excellency's Government to these communications dated 15 September 2011 and 5 August 2014. However, we remain concerned in light of the new allegations detailed below.

According to the information received:

In recent months, KISA has received several complaints from migrant persons regarding the alleged violent and discriminatory behavior of a police officer from the Special Traffic Squad Z. On 1 June 2019, the police officer arrested a migrant person in Solomou Square in Nicosia. The incident was reportedly followed by violations of various procedural rights of the arrested individual. On 5 June 2019, KISA submitted a complaint against the police officer in question with the Independent Authority for the Investigation of Allegations and Complaints against Police (IAIACAP). Mr. Polykarpou was mentioned in the complaint among the witnesses of the incident. The organisation also requested a broader examination of police abuses against migrants.

On the morning of 2 August 2019, Mr. Polykarpou heard the above-mentioned police officer loudly interrogating an adolescent foreign national near KISA's office. When Mr. Polykarpou came outside to ask if the interrogated individual

needed any help, the police officer ordered him to leave immediately. The human rights defender refused to do so, arguing that he had the right to watch what was happening in a public space. The police officer then threatened that Mr. Polykarpou would be arrested for obstructing the work of the police. Following Mr. Polykarpou's declaration that he did not intend to obstruct the work of the police, the police officer requested support from his colleagues, who arrived promptly and arrested the human rights defender.

Following the arrest of Mr. Polykarpou, the police officer reportedly threatened other KISA staff members with arrest if they published photographs or any other material recorded during the incident.

Mr. Polykarpou was then taken to Lycavitos police station where he was orally informed that he was charged with "obstruction of police work" and an "attempt to escape lawful arrest and custody". Mr. Polykarpou was released after spending approximately three hours in police custody. To date, he has not been served with a formal indictment. The investigator from Lycavitos police station orally informed Mr. Polykarpou that the investigation concerns the violation of two articles of the Penal Code concerning a "common attack" (article 244(b), punishable with up to 2 years imprisonment), and an "attempt to escape lawful arrest and custody" (article 128(b), punishable with up to 5 years imprisonment).

On 6 August 2019, KISA filed a complaint over Mr. Polykarpou's treatment with the IAIACAP. To date, no investigation has been initiated.

We express our serious concern at the arrest of Mr. Doros Polykarpou and the police investigation against him, which appear to be directly linked to his peaceful activities in defense of the human rights of migrants and in particular, to the complaints filed by KISA regarding the reported police abuse against migrants and his intervention with the police officer on 2 August. Further concern is expressed at the threats allegedly made against other KISA staff members in relation to the arrest of Mr. Polykarpou. Our concerns are strengthened by the fact that similar measures have been taken against Mr. Polykarpou and KISA in the past, as detailed in the previous communications mentioned above. The recent incidents thus appear to reflect a pattern of intimidatory actions by the State, which may deter other migrant rights defenders in Cyprus from continuing their legitimate and important work.

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 comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal and factual basis of the arrest of Mr. Doros Polykarpou and the investigation against him, along with information on how these are compatible with international human rights law.
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the reported police abuses against migrants. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information as to what steps have been taken to ensure that human rights defenders in Cyprus, including all those who work and advocate for the rights of migrants, 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.

Michel Forst
Special Rapporteur on the situation of human rights defenders

Felipe González Morales
Special Rapporteur on the human rights of migrants

Annex
Reference to international human rights law

While we do not wish to prejudge the accuracy of these allegations, the above allegations appear to be in contravention with articles 9, 19 and 22 of the ICCPR, ratified by Cyprus on 2 April 1969, which guarantee the right not to be deprived arbitrarily of liberty, and the rights to freedom of expression and association respectively.

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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

article 9, para 3(a) and (c) which provide that everyone has the right, individually and in association with others, to "complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay", as well as that everyone has the right to offer relevant advice and assistance in defending human rights and fundamental freedoms;

article 12, paras 2 and 3 which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence

We would like to refer also to the Human Rights Council resolution 31/32 which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights,

such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.