

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Enforced or Involuntary Disappearances; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE:
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26 March 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 34/19, 36/6 and 35/15.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the death in custody of **Mr. Zaki Mubarak Youssef** in Silivri Prison near Istanbul.

According to the information received:

On April 3, 2019, Mr. Youssef a 56 year old Palestinian citizen, disappeared in Turkey. On April 22, 2019, Mr. Youssef's name was published on the Aljazeera News website as having been arrested by the police. He was being detained at Silivri prison in solitary confinement, without access to a lawyer or communication with his family.

Less than one week later, on 29 April, without first initially informing his family, the Turkish authorities announced on the official Anadolu News Agency that Mr. Youssef committed suicide by hanging. From the date of arrest until his death, Mr. Youssef is not known for having been formally charged or presented before to a court.

After the family learnt about Mr. Youssef's death, they requested that his body be handed over. The body of the deceased was transported to Egypt, one month later. Following an independent autopsy examination, forensics experts concluded that Mr. Youssef was subjected to torture, his tongue cut off and some internal organs were missing.

It remains unclear why Mr. Youssef was arrested or abducted, and what was the cause of his death.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned by what appears to be the arbitrary arrest and detention of Mr. Youssef, his disappearance since, followed by his death, possibly preceded by torture, in Silivri Prison. Should these allegations be confirmed, they would constitute violations of articles

3, 5 and 9 of the Universal Declaration of Human Rights, as well as articles 6, 7, 9, and 14 of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Turkey on 24 November 2006. They would also contravene the protections provided for by the Declaration on the Protection of all Persons from Enforced Disappearance adopted by General Assembly resolution 47/133 of 18 December 1992, specifically Articles 2, 7, and 10.

Articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which was ratified by Turkey on 2 August 1988 codify the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Article 12 outlines the obligation of state parties to that convention to carry out a prompt, independent and thorough investigation wherever there is reasonable ground to believe that an act of torture has been committed.

The United Nations Human Rights Committee, which is the highest UN institution to interpret implementation of the ICCPR, in its General Comment No. 36, highlighted the duty of States to take adequate measures to prevent suicides of individuals deprived of their liberty (para 9) and to investigate and, where appropriate, prosecute perpetrators of unlawful deprivations of life, including incidents involving allegations of excessive use of force, as an important element of the protection afforded to the right to life by the ICCPR (CCPR/C/GC/36, para 27). The purpose of the investigation is to clarify the circumstances surrounding the death and to contribute to preventing the recurrence of death in custody, reducing trauma and providing an effective remedy to the next of kin and the identification, prosecution and punishment of those responsible.

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 detailed information about the factual and legal grounds for the arrest, incommunicado detention of Mr. Youssef, and the reason why his family was not informed of his arrest and place of detention.
3. Please provide detailed information about the conditions under which Mr. Youssef was detained, and the cause and circumstances of his death in prison. Was his death in detention investigated, by whom, and what were the conclusions of the investigation? Please provide related documentary evidence. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is consistent with Turkey's international human rights obligations.

4. Similarly, please provide detailed information about any investigation, judicial or otherwise, including medical and forensic examinations that may have been carried out in relation to the allegations that Mr. Youssef was tortured, and that such a treatment may have caused his death. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is consistent with Turkey's international human rights obligations.

In the event that the investigations support that the allegations that Mr. Youssef was arbitrarily arrested and detained, that he was disappeared and was held incommunicado, that he was tortured and may have died as a result, we urge that all necessary steps be taken to ensure the accountability of any person(s) responsible for the violations.

We also urge the Turkish authorities to review existing rules and procedures relating to the protection of persons in detention relating to the detention of persons, and to see to it that they are effectively implemented, to ensure the non-recurrence of such violations.

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.

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

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

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Annex

Reference to international human rights law

Article 7 of the International Covenant on Civil and Political Rights, to which XX is a party, provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

The International Covenant on Civil and Political Rights, to which ... is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (article 6). When the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility.

In this respect we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2): “While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant.”

In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council in resolution 8/3, stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

The Council added that this includes the obligations “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions”.

These obligations to investigate, identify those responsible and bring them to justice arise also under articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this respect we note that Human Rights Council Resolution 16/23, paragraph 7(b), urges States to hold responsible not only those who perpetrate torture, but also those “who encourage, order, tolerate or perpetrate such acts [...], to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including

the officials in charge of the place of detention where the prohibited act is found to have been committed.”

We wish to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance and in particular article 2 which prohibits enforced disappearances and article 7 that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. Further, the Declaration establishes that any person deprived of liberty shall be held in an officially recognised place of detention (article 10.1), that an official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention (article 10.3). In this connection, we stress that a failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration.

Furthermore, the Declaration sets out an obligation for States to take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control (article 14).

Finally, it is incumbent upon States to provide redress to the victims of acts of enforced disappearance and their family, ensuring the right to adequate compensation that includes the means for as complete a rehabilitation as possible. In the event of the death of the victim, their dependents shall also be entitled to compensation (article 19).