

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

REFERENCE:
AL AZE 1/2020

3 November 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 43/16, 42/22 and 42/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged harassment and arbitrary detention of Mr. Elchin Mammad**, in Sumgait, Azerbaijan.

Mr. **Elchin Mammad** is a human rights lawyer and president of the Social Union of Legal Education of Sumgait Youth (SULESY), founded in 2000 in the city of Sumgait, which provides free legal assistance to low-income families and legal support for local NGOs. He is also the editor-in-chief of the newspaper *Yukselish Namine*, which reports on civil society and human rights defenders in Azerbaijan.

According to the information received:

On 29 May 2015, Mr. Elchin Mammad was arrested by the police at Baku's airport after participating in a session of the Parliamentary Assembly of the Council of Europe (PACE). He was then taken to an office of the Main Department for Combating Organized Crime of Azerbaijan (MDCOC), where he was detained for 12 hours without any explanation. During his time in detention, the police informed that a travel ban had been issued against him, but did not provide information on the grounds. He was subsequently released without charges. Afterwards, he appealed the travel ban at the Administrative-Economic Court №2 of Baku, which declared that it was unlawful.

On 23 June 2015, Mr. Mammad was summoned for interrogation at the first section of the Sumgait City Police Office. The human rights defender was questioned for three consecutive hours about the work of several Azerbaijani NGOs, including SULESY's. According to the information received, this interrogation was related to a series of criminal cases launched in April 2014 by the Prosecutor General's Office against local and foreign NGOs for funding matters. However, no charges were brought against Mr. Mammad, nor was he subjected to any investigations.

On 9 August 2016, Mr. Mammad was stopped at a checkpoint on the Azerbaijan-Georgia border and was told by police officers that he had a travel ban in place. The defender presented the ruling from the Baku Administrative-Economic Court №2, detailing that the aforementioned travel ban against him

had been lifted, however, the border control officers ignored it. The same day, police officers took the human rights defender to the Gazakh region police station, where his phone and computer were confiscated. He was released nine hours later, when police officers allegedly received a fax from the Chief of the Investigation Department of the MDCOC. The content of the fax remains unknown.

On 30 March 2020, the police arrested Mr. Mammad at his home in Sumgait, five days after he had published a critical report about human rights in the country in his social media, the newspaper he leads and in other news outlets. The arrest came after a woman had filed a complaint about an alleged robbery. Once the police conducted the search in his absence, they claimed to have found stolen jewellery worth 7,500 manats (around 4,070 euros) at his office.

The next day, on 31 March 2020, the Sumgait City Court remanded Mr. Mammad in custody at Shuvalan Pre-Trial Detention Center No.3 for three months as a suspect under article 177.2.4 of the Criminal Code of Azerbaijan: “theft causing damage”. Additional charges under article 228. 1 of the Criminal Code, “illegal purchase and possession of firearm accessories”, were subsequently brought against him, as the police allegedly found ammunitions during a second search of the SULESY offices while he was in detention.

Mr. Mammad is affected by Hepatitis C, and his health has reportedly deteriorated in detention, where he has developed kidney issues and swollen legs. Given the congested conditions of his first cell, Mr. Mammad’s lawyer requested a change of cell to the Public Committee for the Control of Penitentiary Institutions, under the Ministry of Justice. He was then transferred to a cell in better conditions; however, he remains at a high risk of contracting COVID-19 due to the overall overcrowding in the prison.

Although Mr. Mammad was to be released on 30 June 2020, his detention on remand was extended during the length of the trial. The Sumgait City Court has rejected his lawyer’s requests for house arrest on several occasions. The first one, during the preliminary investigation, which was rejected and then appealed, and the second after the investigation when the applicant filed a motion to place himself under house arrest.

On 14 October 2020, the Sumgait City Court sentenced Mr. Mammad to four years in prison for “theft causing damage and “illegal purchase and possession of firearm accessories”. His lawyer has expressed his intention to appeal the decision.

While we do not wish to judge the accuracy of these allegations, we would like to express our serious concern that the charges brought against Mr. Mammad may be linked to his legitimate human rights work. We are further concerned at what seems to be a pattern of harassment against the human rights defender, including continuous detentions and interrogations. We regret that the travel bans imposed on Mr. Mammad have prevented him from travelling abroad to speak about human rights issues, and thereby stifled his legitimate work as a human rights defender as well as his right to participate in public affairs.

The detention of human rights defenders during the COVID-19 pandemic in a context where statistics of new cases remains high, is of serious concern. This is more so when detained human rights defenders are affected by pre-existing health conditions, which may increase their risk of death in detention if not properly treated; this may violate their rights to life and to health. From the beginning of the COVID-19 pandemic, the UN Inter-Agency Standing Committee (WHO and OHCHR); the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and numerous Special Procedures mandate holders, have warned against the disproportionate impact of COVID-19 on all persons deprived of their liberty. They have specifically requested that States reduce prison populations by implementing schemes of early, provisional or temporary release, including in house arrest, particularly for those detainees who are most at risk such as persons with underlying health conditions. They have also call for the immediate, unconditional release of all prisoners whose incarceration is illegal or arbitrary under international law, such as human rights defenders. We regret that other alternatives, such as house arrest, were not assessed for his case.

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 on the factual and legal bases for the detention and travel ban against Mr. Mammad on August 2016.
3. Please explain why Mr. Mammad was not released from pre-trial detention on 30 June 2020, and was instead kept in detention until 14 October 2020, when he was sentenced.
4. Please explain if the Sumgait City Court assessed any alternatives to imprisonment for Mr. Mammad, given his underlying health conditions. If there were not, please explain why his appeals for house arrest have been denied.
5. Please provide information about the current health condition of Mr. Mammad in prison. Please also provide information about the measures taken to ensure his physical integrity and appropriate access to continuous health care.

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.

We would like to inform your Excellency's Government that after having transmitted a joint communication to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the joint communication and the regular procedure.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to article 9 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Azerbaijan on 13 August 1992, which provides, that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Furthermore, we recall that a deprivation of liberty may be arbitrary when it results from the peaceful exercise of the rights or freedoms guaranteed by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR.

We would also like to refer to article 9.3 ICCPR which states, among others, that it shall not be general rule that persons awaiting trial shall be detained in custody. The Human Rights Committee in its General Comment 35, has interpreted that it should not be the general practice to subject defendants to pretrial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime (para.38).

We would like to further refer to ICCPR article 6 that protects the right to life. The Human Rights Committee, in its General Comment No. 36 (CCPR/C/GC/36) establishes that this right concerns the entitlement to be free from acts and omissions that are intended or may be expected to cause unnatural or premature death, as well as to enjoy a life with dignity. This applies to all without any distinction, including persons suspected or convicted for crimes (para 3). Accordingly, States have the duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty, including providing them with the necessary medical care and the appropriate regular monitoring of their health (para 25). States have the responsibility to take appropriate measures to address conditions, such as the prevalence of threatening diseases, that may directly threat life or prevent individuals from enjoying their right to life with dignity.

In this connection, we would like to recall your Excellency's Government's obligations under article 12 of the International Covenant on Economic Social and Cultural Rights, which Azerbaijan acceded to on 13 August 1992. Article 12 protects the right to health and imposes the obligation on States to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to health preventive, curative and palliative services (Committee on Economic, Social and Cultural Rights, CESCR, General Comment 14, para. 34). Further, the UN Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules"), adopted unanimously by the UN General Assembly (A/RES/70/175), establish States' responsibility to provide healthcare for prisoners (Rules 24 to 35); to evaluate, promote and protect the physical health of detainees, paying particular attention to prisoners with special health-care needs (Rule 25(1)), and ensure continuity of treatment and care (Rule 24.2), as well as prompt access to medical attention in urgent cases and to specialized treatment where needed (Rule 27.1).

We would like to also 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 also like to recall the following articles:

- article 5 (a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: to meet or assemble peacefully;
- article 6 (b) and c) which provide for the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;
- article 8, paragraph 1, which stipulates that everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

Finally, we would like to recall that during his visit to Azerbaijan in 2016 (A/HRC/34/52/Add.3), the Special Rapporteur on the situation of Human Rights Defenders noted that there are no specific policies or mechanisms to protect human rights defenders from attacks, threats or harassment. He expressed concerns at the way NGOs and human rights activism in general is projected, which leads to the delegitimization of critical views and voices. In this occasion, the Special Rapporteur recommended that the Government consider adopting national guidelines on the protection and promotion of human rights defenders, followed by a concrete action plan to strengthen the environment in which they operate (para. 97).