

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL UKR 3/2020

11 November 2020

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; Special Rapporteur on the human rights of migrants; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 45/3, 42/22, 43/6, 40/10, 40/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged enforced disappearance of Messrs. **Alisher Haydarov** and **Rahmiddin Saparov** in Ukraine prior to their forcible return, as well as in transit to and upon arrival in Uzbekistan, where they are likely to face arbitrary detention, prosecution and, potentially, torture or other cruel, inhuman or degrading treatment because of their religion or beliefs or their imputed affiliation with an extremist organization or movement.

According to the information received:

Case of Alisher Haydarov

On 4 October 2020, at approximately 11.30 a.m., Mr. Alisher Haydarov, an Uzbek national, was arrested close to Privolnaya Street in Mykolayiv, Ukraine by unidentified agents in plainclothes presumably affiliated with the Security Service of Ukraine. It is alleged that he was then forcibly returned to Uzbekistan on the same day in close coordination with Uzbek law enforcement agencies.

Shortly before the arrest, at about 11.20 a.m. on the same day, Mr. Haydarov called a taxi and headed towards the Pushkinsky ring in the city of Mykolayiv. He informed his relatives that he was on his way to Bila Tserkva. The car was presumably stopped by agents of the Security Service of Ukraine, who took him out of the car and bundled him into a minibus.

Following the alleged abduction, persons associated with Mr. Haydarov contacted the call centre of the "883" taxi service in Mykolaiv which suggested that his trip was recorded as 'cancelled' in their database due to an arrest made by the Security Service of Ukraine.

In the evening on the same day, Mr. Haydarov's relatives filed a missing person report with the local police in Mykolaiiv. No information as to his whereabouts was provided by Ukrainian authorities.

A few days later, his relatives in Uzbekistan received a call from Uzbek authorities informing that he was detained in Tashkent, but no information was disclosed regarding his exact whereabouts and state of health.

It was reported that Mr. Haydarov fled Uzbekistan fearing persecution on religious grounds. Previously, Mr. Haydarov had been arrested three times during waves of arrests in Uzbekistan in 2004, 2007 and 2009 as he was considered to be a potential supporter of the Wahabbist movement. He had allegedly been subjected to torture in detention, which resulted in permanent kidney damage.

Information received indicates that Uzbekistan was seeking his extradition from Ukraine based on extremism charges reportedly initiated by Uzbekistan's judicial authorities. Upon arrival in Ukraine, Mr. Haydarov applied for asylum which was rejected by the State Migration Service. The decision was appealed until legal remedies were exhausted.

It is alleged that while Mr. Haydarov is a pious Muslim, he does not belong to any religious organization or movement. However, the Government of Uzbekistan may view him as affiliated with the Islamic Movement of Uzbekistan or the Wahabbist movement, which are reportedly designated by the Government as extremist and/or terrorist groups.

Allegations were made that thousands of religious prisoners in Uzbekistan -- mostly observant Muslims -- have remained behind bars on fabricated charges of "religious extremism" or membership in a banned religious group. Many religious prisoners subjected to multiple arbitrary extensions of their prison terms reportedly continued to serve those sentences, and claimed to have experienced torture, which ostensibly remains widespread and routine.

At the time of the present communication, the fate and whereabouts of Mr. Alisher Haydarov remain unknown.

Case of Rahmiddin Saparov

On 19 October 2020, Mr. Rahmiddin Saparov was abducted by agents presumably affiliated with Uzbekistan's security services near detention facility no. 64 in Poltava, Ukraine. It is alleged that he was then forcibly transferred to Uzbekistan in coordination with Ukrainian law enforcement agencies.

Mr. Saparov had been detained in detention facility no. 64 in the town of Poltava, Ukraine, having been sentenced in 2016 on robbery charges, and was released on 19 October 2020. Prior to his release, representatives of local civil society organizations provided him with legal counselling on asylum. On 16 October 2020, Mr. Saparov's asylum application was transmitted by the prison administration to local immigration authorities.

On the day of his release on 19 October 2020, Mr. Saparov's lawyers were supposed to meet him in the detention facility as per their earlier agreement. The prison administration informed them that he had been released early in the morning claiming that no information was available as to his whereabouts. The lawyers immediately filed a missing person report to local law enforcement authorities and subsequently inquired with the State Migration Service and the Security Service of Ukraine. However, no information concerning his whereabouts or state of health has been provided by Ukrainian authorities to date.

Further allegations were made that Mr. Saparov had been forcibly transferred to Uzbekistan by plane from Boryspil International Airport at approximately 2:00 p.m. on 19 October 2020.

According to information received, no extradition procedures were initiated by Ukrainian authorities with the aim of deporting Mr. Saparov from Ukraine to Uzbekistan. It is indicated that he had previously fled Uzbekistan fearing persecution on religious grounds following a decision by Uzbek authorities to press extremism charges against him.

At the time of the present communication, the fate and whereabouts of Mr. Rahmiddin Saparov remain unknown.

While we do not wish to prejudge the accuracy of these allegations, we are alarmed that Messrs. Haydarov and Saparov may have been subjected to an alleged arbitrary detention and enforced disappearance in Ukraine with the intention of secretly transferring them to Uzbekistan, where they appear to have been forcibly disappeared upon arrival. We are particularly concerned about the reports that Mr. Haydarov had previously been subjected to torture and ill-treatment in Uzbekistan because of his religion or belief and his assumed affiliation with certain religious movements and organizations. We also remain preoccupied that the persecution against both individuals may continue following the alleged forcible returns.

Those allegations, if confirmed, would amount to violations of Ukraine's obligations under the International Covenant on Political and Civil Rights (ICCPR), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the International Convention for the Protection of All Persons from Enforced Disappearance, duly ratified by Ukraine.

We are also concerned at the extremism charges levied against both individuals. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed concern at the adverse impact of the use of extremism in the context of freedom of thought, conscience and religious belief (A/73/362, para. 14). Freedom of religion and belief is a universal right, an intrinsic aspect of a person's humanity, which allows everyone to practice their religion or belief, individually and in community with others, in private or in public, to manifest his religion or belief in worship, observance, practice and teaching (A/HRC/31/18). We concur with the conclusions of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism about the use of the terminology of 'extremism' in national law and practice.

She notes that ‘extremist’ crime is a very vague and problematic category. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism takes the view that the term “extremism” has no purchase in binding international legal standards, and when operative as a criminal legal category is irreconcilable with the principle of legal certainty and is per se incompatible with the exercise of certain fundamental human rights.

We are further concerned with the alleged participation of agents of the Security Services of Ukraine in the abduction, arrest and forcible return of Mr. Haydarov to Uzbekistan. We are equally concerned with the alleged participation of agents of Uzbekistan’s Security Services in the abduction and disappearance of Mr. Saparov. The apprehension and detention of individuals when there is no reasonable suspicion that they have committed or are about to commit a criminal offence, or other internationally accepted ground for detention, is not permissible under international human rights law. If national law permits intelligence services to apprehend and detain individuals, it is good practice for the exercise of these powers to be subject to the same degree of oversight applying to the use of these powers by law enforcement authorities. Most importantly, international human rights law requires that individuals have the right to challenge the lawfulness of their detention before a court. (A/HRC/14/46, para. 42)

We underscore the fundamental international protection principle of non-refoulement, which is enshrined in several key human rights instruments ratified by Ukraine, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3), International Convention for the Protection of All Persons from Enforced Disappearance (Article 16) and the 1951 Convention on the status of refugees (Article 33). Likewise, the principle of non-refoulement is universally recognized as a principle of international customary law and, as such, constitutes an indispensable component of the customary prohibition of torture and other cruel, inhuman or degrading treatment and punishment.

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. We therefore underline that procedural safeguards upon arrest and during the first hours of deprivation of liberty are essential to prevent human rights violations. These safeguards include immediate registration, judicial oversight of the detention, notification of family members as soon as an individual is deprived of liberty, and the assistance of a defence lawyer of one’s choice.

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 clarify why the Ukrainian authorities failed to disclose information to Messrs. Haydarov and Saparov's relatives and lawyers concerning their arrest in the lead-up to the transfer to Uzbekistan and how this is compatible with Ukraine's obligations to prevent arbitrary detention and enforced disappearances in its territory.
3. Please provide information as to why Mr. Haydarov's application for asylum and international protection was rejected. Kindly also provide information on the status of Mr. Saparov's application for political asylum and international protection.
4. Please provide information on the factual and legal grounds for arresting and deporting both individuals to Uzbekistan. Please clarify precisely how these measures are compatible with Ukraine's international human rights obligations under the human rights instruments it has ratified (ICCPR, CAT, Refugee Convention, Convention on Enforced Disappearances).
5. What is the role of Ukraine's intelligence services and law enforcement agencies with regard to alleged forcible returns of foreign nationals residing in Ukraine? What oversight mechanism – judicial, parliamentary or others – exercises oversight and control of their activities in this regard?
6. Please provide detailed information and, where available, the results of any investigation and judicial or other inquiries which may have been carried out, or which are foreseen, into the aforementioned allegations of enforced disappearance perpetrated against both individuals. If no such inquiries have been conducted, please explain why and how this is compatible with the international human rights obligations of Ukraine.
7. Please provide detailed information as to how comprehensive individual risk assessments are carried out by relevant Ukrainian authorities, both in terms of procedural safeguards and analysis of the country of return situation, so as to ensure that individuals will not be subjected to violations of their fundamental rights in transit and upon return.
8. Please provide information on the safeguards that are in place and the measures taken to implement them in order to avoid forcible return of any person in a similar situation in Ukraine, in particular persons applying for asylum or holding an asylum seeker certificate, to countries where their liberty, personal security, integrity, and lives may be at risk.
9. Please provide information on measures adopted by the authorities to ensure the right of persons to an effective remedy for human rights violations, including arbitrary detention, enforced disappearance, illegal deportation, torture and ill-treatment.

We urge Your Excellency's Government to conduct prompt and effective investigations into the alleged disappearance of Messrs. Alisher Haydarov and

Rahmiddin Saparov, and if the allegations are confirmed, to identify, try and bring to justice those responsible for these alleged enforced disappearances.

We would appreciate receiving a response within 60 days. Past 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.

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 cases 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.

A letter expressing relevant concerns has been sent to the Government of Uzbekistan.

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

Tae-Ung Baik
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Felipe González Morales
Special Rapporteur on the human rights of migrants

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we wish to remind your Excellency's Government of its obligation of ensuring the absolute protection against torture as entailed in articles 2 and 16 of the Convention against Torture (CAT), which Ukraine ratified in 1987, as well as article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Ukraine is a party since 1973. The universal prohibition of torture and other ill-treatment has become a peremptory norm of international customary law. It is non-derogable and, therefore, continues to apply in situations of internal political instability or any other public emergency. No justification whatsoever may ever be invoked to justify its perpetration.

In this regard, we also remind your Excellency's Government of article 3 of CAT, according to which no State Party shall expel, return ("refouler") or extradite a person to another State, when there are substantial grounds for believing that he or she would be in danger of being subjected to torture, inhuman or degrading treatment or other serious human rights violations. Furthermore, we would like to draw your attention to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Article 33(1) of the 1951 Convention stipulates that no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

We would also like to refer your Excellency's Government to article 13 of ICCPR, which provides that "an alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority." In its general comment No. 15, the Human Rights Committee reaffirms this principle (paragraphs 9 and 10).

In addition, we would like to bring to the attention of your Excellency's Government articles 9, 14, 18, 19 and 22 of ICCPR, which establish the right not to be deprived arbitrarily of liberty, the guarantees of fair trial and due process, and the protection of the rights to freedom of conscience, thought, religion or belief, freedom of opinion and expression, as well as freedom of association, respectively, and which note that no restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order ("ordre public"), the protection of public health or morals or the protection of the rights and freedoms of others.

We recall that a deprivation of liberty may be arbitrary if 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 also remind your Excellency's Government that enforced disappearances violate numerous substantive and procedural provisions of the ICCPR

and constitute a particularly aggravated form of arbitrary detention, as per general comment No. 35 of the Human Rights Committee.

We further wish to draw your Excellency's Government's attention to the International Convention for the Protection of All Persons from Enforced Disappearance, ratified by Ukraine in 2018, as well as the Declaration for the Protection of All Persons from Enforced Disappearance, which establish that no State shall practice, permit or tolerate enforced disappearances. The Convention and Declaration also proclaim that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. In particular, we recall that the Convention and Declaration set out the necessary protection by the State, in particular the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons, including information related to any transfers.

Finally, we would like to respectfully remind your Government of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55), which in its Article 2 (1): "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief." In Article 4 (1), the General Assembly further states that: "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]" Furthermore, we would like to refer your Government to Article 4(2) according to which: "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.