

Mandates of the Special Rapporteur on the situation of human rights defenders; the Independent Expert on human rights and international solidarity; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on trafficking in persons, especially women and children

Ref.: AL GRC 4/2021

(Please use this reference in your reply)

16 November 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Independent Expert on human rights and international solidarity; Special Rapporteur on the human rights of migrants and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 43/16, 44/11, 43/6 and 44/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged criminalisation of defenders of the rights of migrants, refugees and asylum seekers, Ms. Sarah Mardini and Mr. Seán Binder.

Ms. **Sarah Mardini** is a defender of the human rights of migrants, refugees and asylum seekers and volunteered with ERCI, providing aid and Arabic translation to refugees arriving to the shore. Ms. Mardini is a Syrian born refugee who fled the Syrian conflict in 2015. She and her sister saved 18 passengers aboard their boat travelling cross the Aegean Sea when the engine failed in transit.

Mr. **Seán Binder** is a defender of the human rights of migrants, refugees and asylum seekers who volunteered with the non-governmental organisation (NGO) Emergency Response Centre International (ERCI) on the Greek island of Lesbos between autumn 2017 and summer 2018. Through ERCI he coordinated civilian search and rescue operations for refugees at sea, assisting boats in distress, and passed on information and technical knowledge to the Greek Coast Guard. He is a deep-sea diver of German nationality

UN Special Procedures mandate holders previously communicated concerns to your Excellency's Government regarding alleged attacks and intimidation of defenders of the human rights of migrants, refugees and asylum seekers in GRC 2/2020. We also raised concerns about legislation that would place onerous reporting requirements and conditions on non-governmental organisations working in the field of migrant, refugee and asylum seeker rights, in communication GRC 1/2021. We thank your Excellency's Government for the replies received to both of these communications; however, we regret to receive further information indicating that human rights defenders supporting migrants and refugees continue to be impeded in their work in practice.

According to the information received:

On 17 February 2018, Ms. Sarah Mardini and Mr. Seán Binder were stopped by Greek police for an identity check while conducting patrolling activities in a car licensed by the ERCI on the island of Lesbos. They were reportedly found to be in possession of two unlicensed radios and the ERCI vehicle

which they were driving was found to have fake military plates hidden beneath the regular license plate. Ms. Mardini and Mr. Binder were held for 48 hours and released without charges.

Police investigations reportedly continued thereafter, coming to a conclusion in July 2018. On 21 August 2018, Ms. Mardini and Mr. Binder were re-arrested and accused of “espionage”, “disclosure of State secrets”, “facilitation of illegal entry”, “membership of a criminal organisation”, “money laundering”, “fraud”, “unlawful use of radio frequencies” and “forgery”. They were held in pre-trial detention for 107 days, being released on bail on 4 December 2018.

Upon release, Ms. Mardini was subject to a re-entry ban, which prevents her from entering Greek territory even to present herself for a trial. Ms. Mardini’s lawyers have appealed against decision, requesting that she be allowed to attend her trial. On 12 November 2021, the re-entry ban against Ms. Mardini was upheld.

Reportedly, there are several irregularities in the justification for the charges against Mr. Binder and Ms. Mardini, including that they were not in Lesbos at the time of some of the alleged incidents. In addition, other charges brought against them appear to be based on the legitimate activities of search and rescue organisations, which is in line with international maritime and international law. For example, their legal activities to help boats in distress allegedly formed the basis of the charge of “facilitating illegal entry”. The alleged administrative offenses of ERCI, such as lack of valid radio licenses, were considered to be serious criminal activities, such as espionage, by Ms. Mardini and Mr. Binder, of which there is no evidence of them committing. With regards to the military plates found behind the regular plates, the prosecution reportedly argues that the human rights defenders intentionally placed them there to allow them to gain access to restricted military areas of the beach. However, the vehicle in question reportedly had two large emblems on both sides, which clearly identifying the car with the NGO.

On 18 November 2021, a hearing will be held for the two human rights defenders on the misdemeanours of “espionage”, “disclosure of State secrets”, “unlawful use of radio frequencies” and “forgery”. The prosecution has not concluded its investigation into the remaining felonies. If convicted on all charges, the human rights defenders could face up to 25 years in prison. A lengthy delay of over two years has already passed since the arrest and accusation of Ms. Mardini and Mr. Binder on these charges.

Several other defenders of the human rights of migrants, refugees and asylum seekers have also reportedly ceased or severely reduced their activities due to difficulty registering their non-governmental organisation and/or fear of retaliation. There are currently no active search and rescue boats on the island of Lesbos.

Without prejudging the accuracy of the allegations, we wish to express our deep concern regarding the criminal proceedings against Mr. Binder and Ms. Mardini, which we fear could amount to the criminalisation of their work protecting the right to

life at sea and providing vital aid to migrants and refugees. Of particular concern are allegations of reported irregularities in the charges against Ms. Mardini and Mr. Binder and the re-entry ban against Ms. Mardini, which may deprive her of her right to a fair trial. We are additionally concerned by charges that appear to conflate search and rescue operations with “facilitating illegal entry”, a serious felony in Greek law. We are furthermore concerned by the prolonged pre-trial detention of the defenders and the pace of the investigation into the crimes for which they are charged. We fear this may deter others from carrying out legitimate human rights work until a verdict is reached, for fear of similar proceedings against them.

In this regard, we fear the charges brought against Ms. Mardini and Mr. Binder to be representative of the shrinking space in Greece for those wishing to take peaceful action to ensure respect for the rights of migrants and refugees, including at sea. If found to be guilty, we are profoundly concerned for the precedent this would set to target other human rights defenders who currently, or in the past, have engaged in lifesaving human rights work, often at great personal risk. Taken with Joint Ministerial Decision 10616/2020 and Law 4686/2020 (see GRC 1/2021), which allegedly imposed onerous legal requirements and conditions on the registration of NGOs working in the field of migrant and refugee rights, we are concerned that there will be little remaining space for human rights defenders to carry out their legitimate work on the human rights of migrants and refugees, and to provide assistance to trafficked persons.

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 factual and legal bases for the charges against Mr. Binder and Ms. Mardini. Please explain how these charges are consistent with Greece’s obligations under international law.
3. Please explain how Ms. Mardini’s re-entry ban is consistent with Greece’s obligations under international law with reference to the right to a fair trial.
4. Please provide information on the measures in place to ensure that human rights defenders supporting the rights of migrants, trafficked persons, refugees and asylum seekers can carry out their legitimate work without fear of criminalization or retaliation of any sort, from State and non-State actors.
5. Please provide information on the reasons for the delay of over two-years between the beginning of investigations into the misdemeanors

and the beginning of the corresponding trial. Please also provide information on the status of the investigation into the felonies, and the reasons for which the investigation has yet to be concluded.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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 may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Obiora C. Okafor
Independent Expert on human rights and international solidarity

Felipe González Morales
Special Rapporteur on the human rights of migrants

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Annex

Reference to international human rights law

The above mentioned allegations appear to be in contravention with the right to freedom of association under article 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Greece in 1997, which requires States parties to take positive measures to create an enabling environment for associations. It is crucial that individuals exercising this right are able to operate freely without fear that they may be subjected to, for example, any threats, acts of intimidation or violence. States additionally have a negative obligation not to unduly obstruct the exercise of the right. Associations pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection (A/HRC/20/27, paras. 63-64).

In relation to Ms. Mardini's case, we would like to draw the attention of your Excellency's Government to article 14 of the ICCPR, which guarantees the right to a fair trial, including the right to be tried in person, and to defend oneself in person. The imposition of a re-entry ban appears to be in violation of this right.

Furthermore, we wish to stress that the arbitrary imposition of travel bans against human rights defenders to prevent them from participating in human rights activities outside their country of residence is contrary to the spirit of Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognize Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders.

We would also like to bring to the attention of your Excellency's Government article 15(1) of the ICCPR, which requires that no individual should be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. Criminal laws should be sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognises and seeks to prevent that ill-defined and/or overly broad laws are open to arbitrary application and abuse.

We would further 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, I 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 5 point c), which provides for the right to communicate with non-governmental or intergovernmental organizations;
- Article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- Article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- Article 12, Paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone 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.

We would like to refer also to the Human Rights Council Resolution 31/32 which in Paragraph 10 underlines 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.

We would like to once again draw your Government's attention to the report of the Special Rapporteur on the situation of human rights defenders' report to the 37th session of the Human Rights Council, which recommends that States "ensure that [human rights defenders] are not threatened with or subject to arrest, detention or deportation when reporting crimes, labour rights violations, and other forms of human rights violations" and that States avoid "any criminalization, stigmatization, impediment, obstruction or restriction... (including in assistance provided by local authorities, such as regional or municipal bodies) that is contrary to international human rights law".

In addition, we would like to refer to the report of the Special Rapporteur on the human rights of migrants, on the right to freedom of association of migrants and their defenders (A/HRC/44/42). In this report, the Special Rapporteur recommended States to ensure that criminal justice laws are not misused to punish migration related humanitarian acts or to harass civil society organizations that work with migrants; and to ensure that all legislation concerning smuggling and trafficking has humanitarian exceptions applicable to persons and organizations that conduct humanitarian assistance or provide aid to migrants without criminal intent (para. 89, (l) and (p)).

We would also like to highlight the report of the Special Rapporteur on trafficking in persons, especially women and children to the Human Rights Council in 2018, (A/HRC/38/45). In this context we would like to recall the Special Rapporteur's recommendation in paragraph 71 calling on States to ensure that organizations and

individuals who assist people on the move are not criminalized or otherwise punished for doing so. We would like to highlight Article 9(3) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, which specifies cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, in actions to prevent trafficking in persons. We would like to refer to the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), Guideline 5(9) encouraging law enforcement authorities to work in partnership with nongovernmental agencies in order to ensure that trafficked persons receive necessary support and assistance.

The Council of Europe Convention on Action against Trafficking in Human Beings, which your Excellency's government ratified in 2014, sets important obligations aimed at improving the protection of victims of trafficking, and in particular we would like to refer to article 35 which imposes an obligation to cooperate with civil society to meet the objectives of the Convention and Article 12(5) which relates to provision of assistance to victims, specifically 'to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.' We would also like to highlight Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, especially Article 18(2).

Finally, we would like to refer to the 8th General Report of the Group of Experts on Action Against Trafficking in Human Beings, in particular the thematic section on provision of assistance to victims of human trafficking which specifically highlights role of civil society.