

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL SRB 2/2022

(Please use this reference in your reply)

21 February 2022

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; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/20, 44/5 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention in Serbia of Mr. **Ahmed Jaafar Mohammed Ali**, and his extradition to Bahrain, on 24 January 2022, based on a red notice by the Interpol, issued on Bahrain's request and despite interim measures instructed by the European Court of Human Rights. Since his arrival in Bahrain, Mr. Ali, who may be facing death penalty, remains without access to legal assistance.

According to the information received:

Mr. Ahmed Jaafar Mohammed Ali (أحمد جعفر محمد علي) is a 49-year old national of Bahrain. He was allegedly a labour rights activist since 1994, for which reason he was arrested and allegedly subjected to torture during interrogations, in December 2007. Mr. Ali decided to leave Bahrain amid the 2011 uprising due to the shrinking civic space and the alleged crackdown on dissent, as he feared for his and his family's security.

From 2011 to 2021, Mr. Ali resided in Iran with his wife and four children, before moving to Serbia, in November 2021, to pursue higher education and allegedly seek asylum for him and his family.

On 3 November 2021, reportedly a few days following his arrival in Belgrade, Mr. Ali was arrested on the basis of a red notice issued by the International Criminal Police Organisation (Interpol) at the request of Bahrain, referencing an arrest warrant issued by the Public Prosecutor of Bahrain on 6 January 2015, for terrorism-related charges against Mr. Ali, including attempted murder of police officers, manufacturing and possessing of explosives committed during the period from 2013 to 2015.

On the same day of his arrest, the High Court of Belgrade decided to detain Mr. Ali pending an extradition request, and he was transferred to the Belgrade District Prison. On 7 December 2021, the Court approved Mr. Ali's extradition to Bahrain, without a risk assessment to evaluate potential serious violations of his human rights in case of return.

Since his arrest in Serbia, and throughout the extradition proceedings, Mr. Ali was denied all contact with the outside world including access to his family or his ex officio lawyer. In his letter to the judge, dated 20 December 2021, Mr. Ali explained the reasons why he left Bahrain, the serious human rights violations he feared if returned, and claimed his right to contact a lawyer in order to prepare his defence.

On 13 December 2021, Mr. Ali's lawyer appealed the extradition decision. The Court heard the case, a month later, on 17 January 2022, in the presence of Mr. Ali and his lawyer, appointed by the Serbian authorities, where they elucidated the request to seek asylum in Serbia, allegedly for fear of persecution if returned to Bahrain, due to his labour rights activism and his conviction of terrorism-related offenses that took place between 2013 and 2015, after he had left Bahrain. Despite the request made to the Court, Mr. Ali was not allowed access to asylum procedures in Serbia.

The next day, on 18 January 2022, the High Court of Belgrade rejected the appeal and informed the Ministry of Justice of its decision authorizing the extradition of Mr. Ali.

Having exhausted all domestic remedies, Mr. Ali's lawyer submitted an application to the European Court of Human Rights (ECtHR) requesting the review of the Serbian Court decision approving the extradition of Mr. Ali, invoking a potential violation of article 3 of the European Convention on Human Rights. In response, the ECtHR indicated that in the interests of the parties and to ensure proper proceedings, the Government of Serbia should refrain from extraditing Mr. Ali until 25 February 2022, at 5 p.m. CET, referring to rule 39 of the Rules of the Court. The ECtHR further requested information and clarification from the Serbian Government regarding legal mechanisms in Bahrain enabling the review of the life imprisonment sentences imposed on Mr. Ali and permitting the right to parole; his right to retrial as per Bahrain's diplomatic assurances to Serbia; the consideration of potential risks of torture or other forms of ill-treatment if returned to Bahrain; and on the asylum procedures made available to Mr. Ali in Serbia. The deadline for submitting the required information to the Court was set on 11 February 2022.

Despite the instructed interim measures by the ECtHR, the Serbian Government decided to proceed with the extradition of Mr. Ali, on 24 January 2022, who reportedly left Belgrade airport at 5.10 a.m. CET, aboard a private jet, flight number ROJ23, which landed in Manama at 11.11 a.m. (Bahrain Time). It is reported that a Serbian High Court judge had sent a letter to the police, on 23 January 2022, mentioning the interim measures instructed by the European Court and requesting from the police to refer to the Ministry of Justice as the only competent authority in the case of extradition of Mr. Ali.

On 27 January, the Serbian Government sent a clarification note to the ECtHR, explaining that the extradition final decision by Belgrade High Court was issued on 17 January 2022, and transferred to the Ministry of Justice for execution. The next day, the Ministry adopted the extradition order, prior to the instruction of interim measures, under the condition that Mr. Ali would be entitled to a re-trial in his presence before the competent court in Bahrain.

Upon his arrival in Bahrain, the Ministry of Interior of Bahrain issued a statement indicating the return of Mr. Ali, as a result of cooperation with Interpol, and confirming

that he is facing three counts of life-imprisonment and ten additional years for terrorism-related offenses. According to the information received, the Court also decided to strip Mr. Ali of his Bahraini nationality, as part of the sentence against him.

On 29 January 2022, a statement was published by the Public Prosecution of Bahrain, stating that Mr. Ali was “found guilty of attempted murder of police officers, citizens and other terrorist offences...the convict was involved in managing and training terrorist cells, and manufacturing and preparing explosive materials with the aid of the Iranian Revolutionary Guard as well as other terrorist groups in Iraq and Bahrain.” Furthermore, the statement mentioned that the Prosecution initially requested the death penalty in the case of Mr. Ali, which was reduced to life sentence by the Court. Although the prosecution indicated that Mr. Ali would be allowed to pursue judicial proceedings and granted his legal rights, no clear information was made available about his potential retrial or the review of his sentences, which may exceed 80 years imprisonment.

Since the return of Mr. Ali in Bahrain, he was reportedly held in the custody of the Criminal Investigation Directorate (CID) for 24 hours, before being transferred to the Dry Dock detention centre, on 25 January, and subsequently to Jau Prison, on 5 February.

Throughout his detention, Mr. Ali was allowed to briefly call his family, on five occasions, for only a few minutes each, while requests for family visits have been declined, stating COVID-19 related restrictions. Mr. Ali has been further denied any contact with his lawyer or access to legal representation, and has been allegedly requested to sign paperwork to appeal his convictions, without the presence or advice of a lawyer.

On 8 February 2022, during the last call between Mr. Ali and his family, he reportedly demonstrated symptoms, such as a runny nose, cough and reported high temperature, suggesting he might have contracted COVID-19.

Mr. Ali was convicted and sentenced in absentia in a case about which Special Procedures’ mandate holders have previously expressed concern, in an urgent appeal (UA BHR 1/2017) sent on 19 January 2017, in particular concerning the irregularities in judicial proceedings and the use of false confessions extracted through torture as a basis for the ruling. Three of the persons convicted in this case were executed on 15 January 2017.

While we do not wish to prejudge the accuracy of these allegations, we would like to express deep concern about the extradition of Mr. Ali from Serbia to Bahrain in violation of interim measures ordered by the European Court of Human Rights (ECtHR), on the basis, *inter alia*, of the potential risk of violation of article 3 of the European Convention on Human Rights, relating to the prohibition of torture and other ill-treatment.

In this connection, we would like to remind Your Excellency's Government of the principle of non-refoulement which provides for the absolute and non-derogable prohibition to return persons to places where there are substantial grounds to believe that, upon return, they could face serious human rights violations, including arbitrary deprivation of life, or other irreparable harm, such as persecution, torture or other ill-treatment. In particular, article 3 of

the Convention against Torture (CAT) provides that “no State has the right to expel, return or otherwise remove any individual from its territory whenever there are substantial grounds for believing that the person would be in danger of being subjected to torture in the State of destination”, and that in determining whether such grounds exist, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. This prohibition on refoulement extends to every person, regardless of their legal or migratory status.

We are also very concerned that the situation Mr Ali, including the serious violations to his human rights, was allowed by the abusive application of national counter-terrorism legislation and the instrumentalization of international security cooperation mechanisms. In line with the foregoing, we wish to refer to the Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law which includes due process guarantees.

Furthermore, we wish to remind Your Excellency's Government that international extradition law provides procedures that countries must follow when arresting, detaining and returning persons for criminal prosecution in another country, and which are intended to guarantee respect for the right of such persons to a fair trial, in accordance with article 14 of the International Covenant on Civil and Political Rights (ICCPR), and article 6 of the European Convention on Human Rights (ECHR).

We are further alarmed by the alleged denial, for Mr. Ali, of access to asylum procedures. In this respect, we would like to underline that States are requested to have a legal regime on asylum, enabling all applications for asylum to be processed. This regime must respect certain due process elements including the provision of legal assistance, remedies to challenge rejections of asylum applications, and protection against deportation pending appeal. We are hence dismayed by the alleged deprivation of Mr. Ali of his fundamental safeguards, including denying him contact with his family or contact with his lawyer. Denial of these safeguards contravenes the most basic requirements of due process, and is known to significantly increase the risk of torture and ill-treatment.

Furthermore, we are concerned with the possibility that the death penalty may be imposed in the present circumstances, which also include allegations of torture to extract confessions. According to the information available to us, other defendants convicted of the same charges, have been sentenced to death in the past and three of them have been executed in 2017. In this respect, we wish to stress that, when not legally prohibited, the death penalty may be imposed only following compliance with a strict set of substantive and procedural requirements and guarantees of a fair trial, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed, to adequate legal assistance at all stages of the proceedings. Furthermore, confessions and other information extracted under torture or ill-treatment are not admissible into any legal proceeding, as their admission violates the rights to due process and a fair trial (CAT, article 15).

We emphasize that the imposition, and subsequent execution of a death sentence, upon the conclusion of a trial in which due process and fair trial standards have not been respected constitutes an arbitrary killing for which the State is 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 on the procedures for the extradition of Mr. Ali from Serbia to Bahrain and explain how these procedures are compliant to the absolute and non-derogable obligation of Serbia to non-refoulement when there are substantial grounds for believing that the person would be at risk of torture or other forms of ill-treatment upon his return.
3. Please provide detailed information on the measures taken by the Serbian government to assess the risks of human rights violations, particularly in relation to the prohibition of torture and ill-treatment, Mr. may be exposed to as a result of his extradition to Bahrain. In addition, explain how Mr. Ali would have benefited from legal and procedural safeguards during his extradition and how these safeguards comply with international human rights norms and standards.
4. Please provide detailed information on the legal and factual grounds for the extradition of Mr. Ali in violation of the interim measures instructed by the ECtHR, transmitted in writing by the High Court judge to the Ministry of Interior, and explain how this decision complies with the obligations of Serbia.
5. Please explain in details the diplomatic assurances provided by the Kingdom of Bahrain to the Serbian Government to ensure his right to a fair trial, and to be free from torture and other forms of ill-treatment.
6. Please provide detailed information on the measures taken, following Mr. Ali's extradition, to ensure that the assurances provided by the Kingdom of Bahrain to the Government of Serbia are implemented, in particular Mr. Ali's right to have his sentences reviewed, and to a retrial respecting due process of law.

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.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent the re-occurrence of the above-mentioned violations and to ensure the accountability of any person(s) who has been proven to be 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 issues in question.

We would like to inform your Excellency's Government that a similar letter was sent to the Government of Bahrain.

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

Nils Melzer

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

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Fionnuala Ní Aoláin

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

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 3 of the Universal Declaration of Human Rights which states that "Everyone has the right to life, liberty and security of person"; article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Bahrain on 20 September 2006, which provides that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

We would also like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Bahrain ratified on 6 March 1998. We would also like to emphasise that "[A]ll methods of torture are subject to the same prohibition and give rise to the same legal obligations, regardless of whether the inflicted pain or suffering is of a "physical" or "mental" character, or a combination thereof" (A/HRC/43/49).

We also like to bring to your Excellency's Government attention the legal and procedural safeguards against torture and ill-treatment including the right to legal counsel and to contact one's family from the outset of arrest provided in the UN Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment (Body of Principles). According to body of principles the "Communication of the detained or imprisoned person with the outside world, and in particular his family . . . shall not be denied for more than a matter of days."(Principle 15). Notwithstanding, the right to immediately inform a person of his choice of the arrest (Principle 16.1) and to further correspond with family "detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world."(Principle 19). We also refer to paragraph 28 of the General Assembly resolution 68/156 (2014) which emphasises that conditions of detention must respect the dignity and human rights of persons deprived of their liberty and calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment.

We would like to further refer to article 9 of the CCPR, taking into account the Human Rights Committee (HRC) general comment No. 35 (2014) on liberty and security of person. The State should, inter alia, ensure that, in practice, all persons deprived of their liberty are informed promptly of their rights and guaranteed all fundamental legal safeguards from the very outset of detention, including prompt access to counsel of their own choosing and confidential meetings with counsel. The State should also ensure that any failure in that regard constitutes a violation of procedural rights entailing appropriate sanctions and remedies. In addition, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under article 9(3) and 9(4) of the Covenant. Judicial oversight of detention is a fundamental safeguard of personal liberty and is essential in ensuring the legality of detention and the right to Habeas Corpus, consequently the right to an effective remedy as stated under article 8 of the Universal Declaration of Human Rights and article 2(3) of the Covenant. We also recall paragraph 27 of General Assembly Resolution 68/156, which, "[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or

punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished.”

We would also like to underline conclusion of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, calling on States to “[E]nsure that all detainees are held in accordance with international human rights standards, including the requirement that all detainees be held in regularized facilities, that they be registered, that they be allowed contact with the outside world (lawyers, International Committee of the Red Cross, where applicable, family), and that any form of detention is subject to accessible and effective court review, which entails the possibility of release”.

We would also like to reiterate the Ruling of the European Court of Human Rights in *Vinter and Others v UK (2013)*, which concluded that “[A] whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration. The Court elaborated on this standard in the *Trabelsi v Belgium* (September 2014) by holding that the necessary review mechanism must enable the national authorities to ascertain, on the basis of objective, pre-established criteria of which the prisoner had precise cognisance at the time of imposition of the life sentence, whether, while serving his sentence, the prisoner has changed and progressed to such an extent that continued detention can no longer be justified on legitimate penological grounds.

We would also like to recall that the Special Rapporteur on Torture, in his report A/60/316, has stated that “diplomatic assurances are unreliable and ineffective in the protection against torture and ill-treatment: such assurances are sought usually from States where the practice of torture is systematic; post-return monitoring mechanisms have proven to be no guarantee against torture; diplomatic assurances are not legally binding, therefore they carry no legal effect and no accountability if breached; and the person whom the assurances aim to protect has no recourse if the assurances are violated. The Special Rapporteur is therefore of the opinion that States cannot resort to diplomatic assurances as a safeguard against torture and ill-treatment where there are substantial grounds for believing that a person would be in danger of being subjected to torture or ill-treatment upon return” and called “on Governments to observe the principle of non-refoulement scrupulously and not expel any person to frontiers or territories where they might run the risk of human rights violations, regardless of whether they have officially been recognized as refugees.” (paras 51 and 52).

We would like to stress that under international human rights law, non-refoulement entails an absolute prohibition on removing a person to a country where they are at risk of torture or cruel, inhuman and degrading treatment or punishment or other serious human rights violations such as en-forced disappearance, risks to life in the absence of necessary medical care and violations of the rights of the child. States should guarantee that all migrants who require protection in this context are not left in a legal limbo, and should ensure that they are granted a legal status.

We respectfully remind your Excellency’s Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005),

2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolutions 35/34 and 22/6 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

Lastly, I would like to draw the attention of your Excellency's Government to paragraph 8a of Human Rights Council Resolution 16/23, which reminds States that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture."