

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ref.: AL KAZ 2/2022
(Please use this reference in your reply)

18 March 2022

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; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/16, 42/22, 43/4 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **detention of Mr. Lukpan Akhmedyarov**.

Mr. Lukpan Akhmedyarov is a human rights defender and journalist, who was covering the recent protests and demonstrations in Uralsk, in northwestern Kazakhstan. He is the former editor-in-chief of the newspaper Uralskaya Nedelya (Uralsk Week). Lukpan Akhmedyarov ran several civil campaigns in defense of fundamental rights and freedoms. He was repeatedly subjected to unlawful arrests and detentions for his human rights work. In 2012, he received the Peter Mackler Award from the international human rights organization Reporters Without Borders for his civil courage and protection of the principles of independent journalism.

We have previously expressed our concerns about the handling of the protests by your Excellency's Government, including excessive use of force against protesters and violations against civil society activists, human rights defenders and journalists in the context of the protests in our communication KAZ 1/2022, dated 18 January 2022.

According to the information received:

On 7 January 2022, Mr Lukpan Akhmedyarov was arrested upon leaving the editorial office of the 'Uralsk Week' in Uralsk. Later the same day, he was sentenced to ten days of administrative detention for participation in an unsanctioned demonstration. He was reportedly detained at the Uralsk Special Detention Center of the Department of Internal Affairs.

According to his lawyer, Mr. Akhmedyarov was present at the demonstrations in his capacity as a journalist, and at one point he reportedly addressed the crowd to urge them to remain peaceful, however the court reportedly refused to take this into account. On 10 January 2022, the court upheld the decision despite the appeal by Lukpan Akhmedyarov's lawyer to his detention. He was released from detention on 17 January 2022.

Mr. Lukpan Akhmedyarov was reportedly subjected to psychological pressure and inhumane treatment while in detention. He was held in solitary confinement, with no access to his family or lawyer. The lights in his cell were never turned off and he was monitored by a camera 24/7.

He is believed to be under continued surveillance. His WhatsApp and email accounts have been compromised and his bank account is reportedly monitored.

While we do not prejudge the accuracy of the above-mentioned allegations, we would like to express our concerns regarding the arrest, detention and sentencing to administrative detention of Mr. Lukpan Akhmedyarov, which would appear to be solely related to his peaceful activities as a journalist, covering protests. We are further concerned by reports that the authorities have reportedly summoned and questioned journalists who covered the recent nationwide protests, and that at least three journalists were sentenced to administrative detention, in apparent violation of journalists' rights during and after protests. We would like to further stress that investigations into the protests should not be used as a pretext to stifle critical journalism.

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 legal basis for the administrative detention of Mr. Lukpan Akhmedyarov and how this measure is compatible with the obligations of your Excellency's government under international human rights law.
3. Please indicate what measures have been taken to ensure that human rights defenders, journalists, civil society and other media workers are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment, and prosecution of any sort.

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. With regard to the persons detained during the protests and currently deprived of their liberty, please

ensure to take all necessary measures to avoid any irreparable harm to their life or personal integrity.

We would like to inform your Excellency's Government that after having transmitted an allegation letter 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 allegation letter and the regular procedure.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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 the international norms and standards applicable to the present case. We would first like to recall article 20 (1) of the Universal Declaration of Human Rights which states that "[e]veryone has the right to freedom of peaceful assembly and association". We would further like to refer to articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Kazakhstan on 24 January 2006, which guarantee the rights to freedom of expression and opinion and freedom of peaceful assembly respectively. Article 21 states that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right 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."

The Human Rights Committee further stated that "[a]rticle 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches" (CCPR/C/GC/37, para. 6). The Human Rights Committee had previously indicated to your Excellency's Government that it "should effectively guarantee and protect the freedom of peaceful assembly and avoid restrictions that do not respond to the requirements under article 4 of the Covenant. In particular, it should refrain from imposing detention on individuals who are exercising their rights and who do not present a serious risk to national security or public safety" (CCPR/C/THA/CO/2, para. 40).

We would like to remind your Excellency's Government the views expressed by the Human Rights Council noting that States must "refrain from imposing restrictions which are not consistent with paragraph 3 [of article 19 of ICCPR], including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups" (A/HRC/RES/12/16, para. 5 (p) (i)). Moreover, The Human Rights Committee indicated that "restrictions on peaceful assemblies must not be used, explicitly or implicitly, to stifle expression of political opposition to a government (CCPR/C/MDG/CO/4, para. 51), challenges to authority, including calls for democratic changes of government, the constitution or the political system, or the pursuit of self-determination. They should not be used to prohibit insults to the honour and reputation of officials or State organs" (CCPR/C/GC/37, para. 49).

Furthermore, as expressed by the Human Rights Committee in its General Comment no. 34, "A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights" (para. 13). The Committee also stated that "the penalization of a media

outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression” (para. 42). Furthermore, and as generally held, attacks against individuals for the exercise of their right to freedom of expression is incompatible with the Covenant, and any such attacks should be subject to independent and impartial investigations (para. 23). In addition, as per the jurisprudence of the Working Group on Arbitrary Detention, the arrest and detention of an individual for the peaceful exercise of rights protected by the Covenant, such as freedom of expression and freedom of assembly, may be arbitrary.

We would further like to recall that in its General Comment n°37, the Human Rights Committee emphasized the importance of the role of journalists, human rights defenders and others involved in monitoring, including the documenting of or reporting on assemblies, and that they may not be prohibited from exercising these functions, also in respect of the actions of law enforcement officials (para. 34).

We would 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, 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.