

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Ref.: UA OTH 73/2022
(Please use this reference in your reply)

7 July 2022

Dear Mr. Vladimirovich Pushilin,

We are addressing you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions and Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, pursuant to Human Rights Council resolutions 44/5 and 42/9.

In this connection, we would like to bring to your attention information we have received concerning the convictions of **Shaun Pinner**, **Aiden Aslin**, and **Brahim Saadoune** (two British nationals and one Moroccan national respectively).

All three individuals were sentenced to death in Donetsk.

According to the information received:

On 9 June 2022, they were convicted of forcible seizure of power or retention of power; participation in an armed conflict or hostilities as a mercenary; and the promotion of training in terrorist activities. Death sentences were imposed in relation to the 'attempted seizure of power', and for the other crimes the individuals have been sentenced to prison terms.

The information received indicates that the trial of the three individuals, including sentencing, was completed after only three days of hearings, which gives the appearance of an expedited trial. Furthermore, it is alleged that the proceedings lacked essential guarantees, such as the presumption of innocence which is recognized as a fundamental right. We are also alarmed by the alleged use of coerced testimony obtained from the individuals, and the absence of a public hearing. In addition, we have concerns about inadequate legal representation, particularly a lack of independence in relation to the appointed lawyers. The procedural rules applied raise serious doubts about the independence and impartiality of the tribunal. It is also alleged that the individuals will not be able to have their death sentence reviewed by an independent higher tribunal.

Allegations have also been received concerning the possible deterioration of the physical and mental health of the detainees, and the inadequate conditions of detention.

While we do not want to prejudge the accuracy of these allegations, we would like to express our grave concern regarding the detention and imposition of the death penalty on the above-mentioned individuals, and their conviction as mercenaries. If

Mr. Vladimirovich Pushilin

confirmed, these allegations would amount to violations of the right to life, as set forth in article 3 of the Universal Declaration of Human Rights, and the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, and as reflected inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

We are further concerned about the apparent instrumentalization of the term “mercenary” to justify the prosecution of the above-mentioned individuals. According to the information received, the three individuals were officially recruited as part of the Ukrainian armed forces and during the conflict were detained as prisoners of war by the Russian armed forces. As per article 47 of Protocol I Additional to the Geneva Conventions of 1949, the definition of mercenary is not satisfied in cases in which an individual is a member of the armed forces of a Party to the conflict. Furthermore, international humanitarian law, provides combatants a “privilege of belligerency” that exempts them from the operation of domestic law for engaging in hostilities permitted by the law of armed conflict. All combatants are also entitled to appropriate treatment as prisoners of war, and protection under the Third Geneva Convention. International humanitarian law provides that prisoners of war may only be prosecuted for war crimes and therefore, the conviction for the above-mentioned charges would violate international humanitarian law.

Accordingly, we respectfully call for the annulment of the death sentence imposed on the individuals mentioned in this communication and observation of their status as prisoners of war.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken to safeguard the rights of the above-mentioned persons.

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 any comment you may have on the above-mentioned allegations.
2. Please provide information on the factual and legal grounds for the conviction of the above-mentioned individuals.
3. Please provide information on the measures undertaken to ensure that the fundamental right of due process of law including fair trial guarantees in the above-mentioned cases was complied with. Please provide information on the legal framework applied and how it respects the basic elements of fair trial and related human rights of the identified individuals.
4. Please provide information on the options available to the above mentioned individuals to ensure an independent and impartial appeal or review of the sentences by a higher tribunal.

5. Please provide information on the conditions of detention of these individuals, and the measures undertaken to ensure respect for their physical and mental integrity.
6. Please provide information on similar cases of individuals charged as mercenaries.
7. Please provide information on whether the relevant actors in Donetsk envisage annulling the death sentence imposed to Shaun Pinner, Aiden Aslin, and Brahim Saadouné.

We intend to publicly express our concerns in the near future as, in our view, the information upon which a 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 to clarify the issues in question.

This communication and any response received will be made public via the communications reporting [website](https://spcommreports.ohchr.org) (<https://spcommreports.ohchr.org>) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Kindly note that a copy of this letter will be transmitted to the Governments of Ukraine, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Morocco. We would like to stress that this letter does not in any way imply the expression of any opinion concerning the legal status of any territory, city or area, or of its authorities.

Sincerely,

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Sorcha MacLeod

Chair-Rapporteur of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination