

**Mandates of the Special Rapporteur on the situation of human rights defenders;
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 MNE 2/2024
(Please use this reference in your reply)

20 August 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 52/4, 52/9 and 50/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged surveillance of Ms. Dinara Smailova and her husband Mr. Almat Mukhamedzhanov in Montenegro and the alleged risk of Ms. Smailova's extradition to Kazakhstan, where she allegedly faces prosecution for her legitimate human rights work.**

Ms. **Dinara Smailova** is a woman human rights defender and the founder of the "NeMolchiKZ" (Do Not Be Silent) Foundation in Kazakhstan. Her organization uses social media to publicize cases of domestic and gender-based violence, expose alleged inaction by law enforcement, and share human rights information. Additionally, it provides support to victims of violence and their families.

Mr. **Almat Mukhamedzhanov** is Ms. Smailova's husband and a human rights defender. He provides legal assistance to victims of violence and serves as a chairman of the "NeMolchiKZ" Foundation's Board of Trustees.

The criminal charges against Ms. Dinara Smailova and her placement on an international wanted list were addressed in a communication to the Government of Kazakhstan dated 18 March 2024 (AL KAZ 1/2024). Despite the reply received from the Government of Kazakhstan on 27 May 2024, we remain concerned about her and her husband's situation.

According to the information received:

Ms. Dinara Smailova and Mr. Almat Mukhamedzhanov have been residing in Montenegro since 8 October 2023.

On 26 October 2023, they applied to the Ministry of Interior of Montenegro for international protection status (applications No. UPI-132/23-7527 and UPI-132/23-7528). According to the responses from the Asylum Directorate of the Ministry of Interior of Montenegro dated 24 April 2024, the deadline for consideration of their applications was extended until 26 January 2025 in order to clarify the factual circumstances.

On 27 December 2023, the authorities of Kazakhstan placed Ms. Smailova on an interstate wanted list, and on 8 January 2024, an international wanted list. There is allegedly a risk of her extradition from Montenegro to Kazakhstan.

Additionally, between December 2023 and March 2024, unidentified individuals – specifically three men and one woman, allegedly agents of Kazakhstan – allegedly followed and photographed Ms. Smailova and Mr. Mukhamedzhanov in [REDACTED] on at least four occasions. In two instances, they allegedly approached Ms. Smailova and Mr. Mukhamedzhanov separately (her in a cafe, him in a store), took close-up photos, and then left. In other cases, they allegedly photographed them together on the street and in a cafe.

According to the reply received from the Government of Kazakhstan on 27 May 2024, the police departments of Almaty city and Almaty and East Kazakhstan regions have six criminal cases pending against Ms. Dinara Smailova for the violation of privacy, fraud, and dissemination of information known to be false (articles 147, 190, and 274 of the Criminal Code of Kazakhstan). The offenses specified in these articles carry imprisonment terms of up to seven, ten, and seven years, respectively. According to the public statement by the Ministry of Interior of Kazakhstan issued on 27 December 2023 about these criminal cases, they have been opened because of Ms. Smailova’s social media posts allegedly containing false information and fundraising activities related to her human rights work. Ms. Smailova is a suspect in these cases.

There are serious concerns that her criminal prosecution may be in retaliation for the human rights activities of the “NeMolchiKZ” Foundation. According to the information received, the Foundation’s work has resulted in the conviction of dozens of men for sexual violence, ten police officers for neglect and inaction, and disciplinary sanctions for over 200 law enforcement officers. Additionally, the organization has reportedly supported victims of domestic abuse in cases involving powerful perpetrators from Kazakhstan.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our serious concern in response to the alleged risk of Ms. Dinara Smailova’s extradition to Kazakhstan, where she allegedly faces prosecution and potential long-term imprisonment for her legitimate human rights work. We are also concerned about the alleged surveillance of Ms. Dinara Smailova and Mr. Almat Mukhamedzhanov in Montenegro, which may be aimed at intimidating them and raises concerns of possible abduction outside of formal extradition proceedings. We are further troubled by the chilling effect for other human rights defenders in exile, seeking protection in Montenegro, that this case may entail.

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 about the status of Ms. Dinara Smailova's and Mr. Almat Mukhamedzhanov's international protection applications and the extradition request from Kazakhstan.
3. Please provide information about adequate safeguards against Ms. Dinara Smailova's refoulement.
4. Please provide information about the factual and legal basis for the surveillance of Ms. Dinara Smailova and Mr. Almat Mukhamedzhanov and explain how these actions are compatible with your Excellency's Government's international human rights obligations. If the surveillance does not originate from the Government, please provide details and, where available, the results of any investigation or other legal proceedings conducted in relation to it and specify how your Excellency's Government ensures that it does not result in abduction or other attacks against their life, health or liberty.

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 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.

Please note that a copy of this letter will be sent to the Government of Kazakhstan for their information.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Gina Romero
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 draw the attention of your Excellency's Government to the following human rights standards.

We would like to remind your Excellency's Government about the principle of non-refoulement that forms an essential protection under international human rights and customary law. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment, or other serious human rights violations.

It is also an explicit obligation assumed by your Excellency's Government through article 33 of the Convention Relating to the Status of Refugees and its Protocol of 1967, joined by Montenegro by succession on 10 October 2006, to refrain from expelling or returning any person who may be a refugee or otherwise be in need of international protection 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 note that in recent years, the issue of refoulement has been raised in connection with the periodic review of your Excellency's Government by the treaty bodies highlighting existing issues in this regard.

In concluding observations on the third periodic report of Montenegro adopted on 10 May 2022 (CAT/C/MNE/CO/3), the Committee against Torture expressed concern that, in practice, asylum seekers do not always have effective access to the asylum procedure due to insufficient procedural safeguards, as well as highlighted the issue of chain refoulement (paragraph 20). The Committee made a number of recommendations in this regard, including that your Excellency's Government should (paragraph 21 (b), (d), (e), (f)):

- Ensure that procedural safeguards against refoulement are in place and that effective remedies with respect to refoulement claims in removal proceedings are available. Decisions to expel individuals should be subject to judicial review on a case-by-case basis and should carry a right of appeal that has suspensive effect;
- Provide training on international refugee law and international human rights law, specifically on the principle of non-refoulement and the risk of chain refoulement, to immigration officials, and also ensure that all standard operating procedures include sufficient safeguards against refoulement;
- Establish effective and fully accessible referral and complaints mechanisms starting from the point of expression of intention to seek asylum;

- Enhance efforts to ensure the criminal accountability of perpetrators of acts that put the lives and safety of migrants and asylum seekers at risk, and ensure that victims, witnesses, and claimants are protected against ill-treatment or intimidation that may arise as a consequence of their complaints.

Additionally, the Human Rights Committee included relevant questions in the list of issues prior to submission of the periodic report of Montenegro dated 6 May 2020 (CCPR/C/MNE/QPR/2). The Committee requested your Excellency's Government to report on adequate safeguards against refoulement, as well as on measures taken to ensure effective access to asylum procedures and guarantee that asylum applications are assessed within a reasonable time frame on an individual basis, and with full respect for due process (paragraph 15).

With regard to risks faced by Ms. Smailova in Kazakhstan, we would like to refer your Excellency's Government to article 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Kazakhstan on 24 January 2006 and joined by Montenegro by succession on 23 October 2006, which provides that no one shall be subjected to arbitrary arrest or detention. As interpreted by the Human Rights Committee in General comment No. 35 (CCPR/C/GC/35), the notion of "arbitrariness" is not to be equated with "against the law" but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law, as well as elements of reasonableness, necessity, and proportionality (paragraph 12). According to the same General comment (paragraph 17) and the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression (article 19) and freedom of association (article 22), is arbitrary. Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings. In this respect, the Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.

We would also like to remind your Excellency's Government of its obligations under article 17 of the ICCPR, according to which everyone has the right not to be subjected to arbitrary or unlawful interference with their privacy and the right to the protection of the law against such interference. As emphasized by the Human Rights Committee in general comment No. 16 (CCPR/C/GC/16), this right is required to be guaranteed against all such interferences whether they emanate from State authorities or from natural or legal persons (paragraph 1). The obligations imposed by this Article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences as well as to the protection of this right (Id.). States parties are under a duty themselves not to engage in interferences inconsistent with article 17 of the ICCPR and to provide the legislative framework prohibiting such acts by natural or legal persons (paragraph 9).

Article 19 of the ICCPR guarantees the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers. This right applies both online and offline. In general comment

No. 34, the Human Rights Committee provided that States Parties to the ICCPR “shall to put in place effective measures to protect against attacks aimed at silencing those who exercise their right to freedom of expression” (para. 23). Recognizing how journalists and those engaged in collecting and analyzing information on the human rights situation and publishing human rights-related reports are frequently subjected to threats, intimidation and attacks because of their activities, the Committee stresses that “all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims be in receipt of appropriate forms of redress.” (para. 23).

Article 21 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of peaceful assembly and article 22 of the ICCPR protects the right to freedom of association with others. As stated in a report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards [A/HRC/17/27, para. 66; and A/HRC/29/25/Add.1].

Furthermore, 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, adopted on 9 December 1998 (also known as the UN Declaration on Human Rights Defenders). Articles 1 and 2 of the Declaration 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.

Likewise, 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 (b), which provides for the right to form, join, and participate in non-governmental organisations, associations, or groups;
- Article 13, which stipulates that everyone has the right, individually and in association with others, to solicit, receive, and utilize resources for the express purpose of peacefully promoting and protecting human rights and fundamental freedoms;
- Article 6 (b) and (c), which provides for the right to freely publish, impart, or disseminate to others views, information, and knowledge on all human rights and fundamental freedoms; and to study, discuss, form, and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;
- Article 9 (1), which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights;

- Article 12 (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 their legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.