

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights defenders

Ref.: AL KGZ 4/2024
(Please use this reference in your reply)

20 December 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; Working Group on Arbitrary Detention and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 53/12, 51/8 and 52/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning concerning the **alleged arrest, detention and prosecution of Mr. Samat Mattsakov on charges of fraud and document forgery. Information suggests that the charges may be brought in retaliation for Mr. Mattsakov's legal work defending the rights of detained human rights defenders, journalists and media workers in high-profile criminal cases.**

Mr. **Samat Mattsakov** is a Kyrgyz defense lawyer who has been admitted to practice law in the Republic of Kyrgyzstan as a member of the Bar Association of the Kyrgyz Republic. He is actively involved in defending the rights of detained human rights defenders, journalists and media workers in high-profile criminal cases.

According to the information received:

On 6 November 2024, a pre-investigative inquiry based on a complaint of a former client of Mr. Mattsakov was initiated by the State Committee for National Security.

On 15 November 2024, the Deputy Prosecutor General of the Kyrgyz Republic reportedly registered a criminal case against Mr. Mattsakov under article 209 part 3 of the Criminal Code of the Kyrgyz Republic, on charges of fraud. The case was subsequently assigned to the investigative service of the State Committee for National Security (SCNS).

On the morning of 29 November 2024 Mr. Mattsakov voluntarily arrived to the central office of SCNS in Bishkek with another defense lawyer for a meeting with the SCNS officers on a case in which Mr. Mattsakov was the legal counsel. No formal summons was received by him from the SCNS to be questioned as a witness. At about 10.40 a.m. Mr. Mattsakov voluntarily entered the building and was subsequently de facto detained by SNCS officers for two hours without access to a lawyer and deprived of his right to a phone call. The SCNS officers seized Mr. Mattsakov's phone.

The information suggests that at 11.40 a.m. Mr. Mattsakov was de facto detained by the senior investigator of the State Investigation Department of the SCNS.

Reportedly, from 10.40 a.m. to 12.30 p.m., Mr. Mattsakov was in the SCNS building without a lawyer and without having had any communication with his family, being de facto detained by head of the SCNS investigative group – senior investigator of the State Investigation Service of the SCNS. Neither Mr. Mattsakov’s family, nor the Ministry of Justice or the Bar Association of the Kyrgyz Republic had been notified of his detention, as required by article 29(7) of the Law “On the Bar of the Kyrgyz Republic and the Activities of Defense Lawyers”. No protocol of detention was drawn by the SCNS, and Mr. Mattsakov’s rights as a suspect were read out to him only orally without signing a formal document on familiarization with his rights.

According to article 5, paragraph 22 of the Criminal Procedure Code (CPC) of the Kyrgyz Republic (KR), actual detention is the moment of actual deprivation or restriction of freedom of a detained person, including freedom of movement, forced retention in a certain place, forced delivery to the bodies of enquiry and investigation (seizure, closing in a room, forcing to go somewhere else or stay in a place, etc.), as well as any other actions that significantly restrict a person's personal freedom, with indication of the exact time when the said restrictions became real, regardless of whether the detainee was given the status of a detainee or not. According to article 44 of the CPC of the KR, the investigating officer is obliged to draw up a protocol of detention and to respect the detainee’s right to: (1) one effective, free, and supervised telephone conversation; (2) access to a lawyer from the moment interrogation starts, and in the case of detention – from the moment of actual detention – and in the absence of a chosen lawyer, to have access to legal assistance guaranteed by the state; and (3) medical examination and assistance of a doctor after actual detention.

At about 12.30 p.m. Mr. Mattsakov was taken out from the central office of SCNS under the guard of five persons: the SCNS operative officers and the SCNS investigator. Mr Mattsakov was escorted to his home, which also serves as his office, where a search was conducted that allegedly violated procedural safeguards: the search was conducted without a court order, due to “operational necessity” invoked by the SCNS.

According to the protocol of search of Mr. Mattsakov’s apartment, the search began at 12.55 p.m. of 29 November 2024 and ended at 1.55 p.m. During the search, 4 CDs and a tape recorder of a case defended by Mr. Mattsakov were seized. These information carriers contained privileged information protected by lawyer-client confidentiality principles, and none of these materials related to the complaint brought against Mr. Mattsakov that had allegedly served as the basis for opening a criminal case against him. The seized materials related to another high-profile criminal case. According to article 30 of the Law “On the Bar of the Kyrgyz Republic and the Activities of Defense Lawyers”, “All information obtained by an attorney, or which became known to him while rendering legal assistance to his client are covered by attorney – client

privilege”.

One of Mr. Mattsakov's lawyers was allowed to be present during the search. The SCNS investigator conducted the search and seizure of evidence in the absence of a judicial sanction, as required by article 29(4) of the Law On the Bar of the Kyrgyz Republic and the Activities of Defense Lawyers”.

During the search and seizure of evidence the SCNS officers filmed their conduct only on the camera of the operative officer’s smartphone, rather than the official video camera that must be used in such cases. Moreover, SCNS officers attempted to confiscate the phone of Mr. Mattsakov’s lawyer and physically and verbally aggressed him during the search accusing him of informing the journalists about the search. There was also an attempt from the SCNS officer to get into a personal car of Mr Mattsakov’s lawyer.

During the search, the information suggests it was evident that SCNS officers were looking for concrete items: they seized only discs related to a certain criminal case. They also seized Mr. Mattsakov’s defense lawyer's certificate, as well as an original copy of Mr. Mattsakov’s client's statement about having no legal claims against Mr. Mattsakov. This same client is allegedly the one whose complaint serves as the basis for criminal charges against Mr. Mattsakov.

Following the conclusion of the search, SCNS officers forcibly escorted Mr. Mattsakov to an unmarked vehicle, which brought him back to the SCNS central office.

Mr. Mattsakov’s lawyers arrived at the central office of SCNS at about 2.20 p.m. According to article 44 of the Criminal Procedure Code of the Kyrgyz Republic the SCNS investigator was obliged to draw up a protocol of detention and to provide Mr. Mattsakov with one effective free and supervise telephone conversation and to have a lawyer from the moment of actual detention. The information suggests that only at 5.50 p.m., after nearly four hours since Mr. Mattsakov detention started, Mr. Mattsakov was allowed to meet with his five lawyers in the office of the head investigator.

According to the protocol of interrogation, Mr. Mattsakov was interrogated as a suspect for the first time between 6.15 p.m. and 7.20 p.m. and for the second time from 8.46 p.m. to 8.48 p.m.

At 9.06 p.m., Mr. Mattsakov was notified of the SCNS investigator’s ruling stating that criminal proceedings had been initiated against him also under article 379 part 3 of the Criminal Code of the Kyrgyz Republic for “forgery of official documents committed to conceal another crime or to facilitate its commission”. Reportedly, Mr Mattsakov stands accused of allegedly forging a legal services agreement with a client, following a complaint made by the latter to the SCNS. It is reported that the contracts for legal services do not fall under the definition of “official documents”. The second incriminated offense under article 379(3) carries a potential penalty of 5 to 8 years of imprisonment, and it reportedly provided grounds for the SCNS investigators to motion for a

custodial pretrial restraint measure.

At 9.56 p.m., Mr. Mattsakov received a second ruling of the SCNS investigator listing two charges for “large-scale fraud” under article 209(3) and for “forgery of official documents committed to conceal another crime or to facilitate its commission” under article 379(3) of the Criminal Code of the Kyrgyz Republic. At 10.01 p.m., according to the protocol of interrogation, Mr. Mattsakov was interrogated for the third time. The interrogation ended at 10.04 p.m.

In accordance with article 6 of the Law “On the Bar of the Kyrgyz Republic and the Activities of Defense Lawyers”, an attorney may not be summoned and questioned as a witness about the circumstances that became known to him/her in connection with his legal assistance and is not obliged to give explanations and testimony for the use in operational and investigative activities. In violation of these provisions, the SCNS investigator continued to interrogate Mr. Mattsakov, despite his explicit refusal to testify against himself. These interrogation reports were not attached to the case file that was submitted by the SCNS investigator to the court when the SCNS filed a motion for pretrial detention.

At approximately 11 p.m. Mr. Mattsakov was brought to the building of the Pervomaisky District Court in Bishkek in a car without special identifications signs. The court hearing commenced at 11.35 p.m.

The overnight court proceedings, attended by a large number of colleagues of Mr. Mattsakov and human rights defenders, appear to have been a tactic to unjustly exhaust the defence and reportedly failed to respect due process. During long hours of proceedings and even during periods when judge announced a recess, members of the public (media and observers) were not allowed to leave the court room to use the toilet, and after leaving the room, they were not admitted back in. The judge did change the court room to a bigger one to accommodate the interest of the public to observe the court hearing.

Before the start of hearing, the investigating judge did not explain to Mr. Mattsakov his rights and obligations. During the court hearing it is reported that he addressed the defense lawyers in a rude manner.

The information suggests that the judge granted to the defense lawyers 20 minutes to familiarize themselves with the case materials, instead of the 30 minutes requested by Mr. Mattsakov’s lawyers. During the study of the case materials Mr. Mattsakov’s lawyers pointed out to the judge that there was no victim’s statement provided, no ruling on recognition as a victim and the no protocol of interrogation as a suspect. They requested that the judge postpone the court hearing due to the lack of the documents in the case file. The judge denied the motions. Subsequently, the defense lawyers asked for the judge’s recusal, referring to the failure to fully ensure the principle of equality of arms. At 00.15 a.m. the judge retired to the conference room. At 2.22 a.m. the judge announced the decision to deny the motion for his recusal requested by

Mr. Mattsakov's lawyers.

Furthermore, during the court hearing, Mr. Mattsakov's lawyers brought several case file violations to the judge's attention:

- i. Incorrect entry of personal data (initials and age) of the victim into the Unified Register of Crime Registration.
- ii. Absence of a notification letter to the Bar Association and the Ministry of Justice about the detention of Mr. Mattsakov in accordance with the requirements of article 29(7) of the Law "On the Bar of the Kyrgyz Republic and the Activities of Defense Lawyers".
- iii. Absence of the attorney's agreement between Mr. Mattsakov and his client, which is the basis for the initiation of the criminal proceedings.
- iv. Absence of the protocol of detention.
- v. Non-compliance with the presumption of innocence during the investigative actions.

The information indicated that during the court hearing, after the SCNS investigator presented an incomplete file when motioning for pre-trial detention of Mr. Mattsakov, Mr. Mattsakov's lawyers requested the investigator to present the attorney's agreement that served as the basis of the charges against Mr. Mattsakov. After the request, the judge declared a 30-minute recess and directed the SCNS investigator to provide the document, in the apparent violation of the principle of equality of arms. When the hearing resumed after 40 minutes, the SCNS investigator delivered only a copy of the allegedly forged legal services agreement but showed it only to the judge. Reportedly, the investigation did not have the original document that served as the basis for the charges. Moreover, the investigator refused to show the copy of the agreement to Mr. Mattsakov's lawyers, citing the confidentiality of the investigation.

Moreover, during the court hearing, when questioned by the judge, the investigator was unable to specify Mr. Mattsakov's exact location within the SCNS building during the periods from 10.40 a.m. to 12.55 p.m. and 1.55 p.m. to 5.50 p.m. – the period in which Mr. Mattsakov had not communicated with his lawyers or his family, and the detention had not been notified. The SCNS investigator reportedly claimed that Mr. Mattsakov was not detained, but voluntarily arrived for the court hearing.

During the court hearing, the investigative judge rejected a motion of Mr. Mattsakov to annex to the court protocol his complaint against the investigating judge – namely, the judge's failure to react to the apparent violations of Mr. Mattsakov's procedural rights during de fact detention after these violations were described during the court hearing. The judge also did not satisfy the next motion of Mr. Mattsakov to issue a separate ruling in relation to misconduct of SCNS investigator and the prosecutor who was

supposed to observe compliance with the rule of law in the case of Mr. Mattsakov. Subsequently, these complaints were still filed by Mr. Mattsakov with the court and will be reviewed in a separate court hearing.

During the court hearing, defense lawyers of Mr. Mattsakov questioned the SCNS investigator about a number of procedural violations, including the following:

- i. Why did the SCNS investigator not obtain an official court sanction for a search of Mr. Mattsakov's house and for other investigative actions that must be authorized by a court? The investigator did not give any explanation, and the judge failed to address this concern in his ruling.
- ii. The investigator's statement that Mr. Mattsakov was not de facto detained prior to his arrival to the court building, was put in doubt by the defense lawyers. During his reply, however, the SCNS investigator admitted that Mr. Mattsakov was not allowed to move freely inside the SCNS building. The judge ignored this procedural violation.
- iii. The lawyers questioned how the SCNS investigators had time on 29 November late evening to draw up a new Ruling on bringing charges against Mr. Mattsakov under two articles of the Criminal Code after having added a second offence to the charge, and how did the SCNS investigator manage to secure the agreement and a signature of the Deputy General Prosecutor within 34 minutes. The lawyers' allegation that the Deputy General Prosecutor's signature could have been falsified was not recorded by the judge.
- iv. Regarding the classification of the incriminated offence, the defense lawyers of Mr. Mattsakov argued that firstly, the agreement for legal services is not an official document under national legislation, and secondly, the defense lawyers argued that the investigator did not present an expert forensic report to substantiate the charge that the document had been forged.

According to the information received, during the court hearing, Mr. Mattsakov's lawyers asked the judge to apply a non-custodial measure of restraint on Mr. Mattsakov, such as electronic monitoring or a written promise not to leave the city so that he could continue his professional activities and could stay next to his family to provide care and support. In accordance with article 107(1) of the CPC KR, when considering the motion about pretrial measure of restraint, in order to determine what measure should apply, taking into account grounds provided for in article 105 of the CPC, the investigating judge must take into account the validity of the charge, information about the personality of the accused, his age, state of health, marital status, occupation and other circumstances. None of these circumstances were reportedly duly assessed by the judge.

The defense argued that there were no legal grounds for using pretrial detention as Mr. Mattsakov has three minor kids (1, 4, 6 years old), he received only positive characteristics from his colleagues, his personal identity has been established, and he has a permanent place of residence in Bishkek. The lawyers also drew the court's attention to the fact that Mr. Mattsakov knew about the criminal case against him well before 29 November, but he had not attempted to flee the city and had no intention of doing so. In addition, they added that he had no previous conflict with the law. At the same time, the investigator did not provide any specific information to justify his claim that Mr. Mattsakov could obstruct the objective investigation of the case or would abscond from justice. Despite the absence of substantiated grounds for the pretrial detention, the judge ruled at 8.37 a.m. of 30 November to place Mr. Mattsakov into pretrial detention at the pretrial detention center of the SCNS until 30 December 2024. The SCNS investigator requested detention for 2 months.

Moreover, in violation of article 108 of the CPC of the KR, the investigating judge did not provide Mr. Mattsakov with a copy of the court ruling. This failure delayed Mr. Mattsakov's filing of an appeal against his own detention. The court provided only one copy of the ruling.

The investigating judge also failed to notify the Bar Association and the Ministry of Justice of the Kyrgyz Republic about the arrest and the decision to impose pretrial detention on Mr. Mattsakov, despite the existence of corresponding obligation in national legislation.

The information further indicates that during the court hearing, SCNS officers engaged in disruptive behavior, including attempts to prevent journalists from taking photographs and recording videos before the session and during breaks. An SCNS officer allegedly tried to forcibly remove a journalist who was filming the SCNS officer. At the same time, it has been reported that SCNS officers themselves took photographs and attempted to intimidate both lawyers and journalists and sought to obstruct the audio recording of the court session while the judge was absent. Reportedly, the judge had prohibited video and photo recording of the court hearing, but it was clarified by the judge that audio recording using dictaphones was not prohibited.

Treatment in detention

According to information received, there are concerns about confidentiality being ensured during meetings of defense lawyers with Mr. Mattsakov inside special meeting rooms in the SCNS pretrial detention centers. Reportedly, there is a CTV camera inside the room, and there are concerns that it is recording both video and audio during meetings that are supposed to be confidential.

The cell in which Mr. Mattsakov is kept together with another cellmate is very small and does not have any appliances to keep personal food parcels, the lightening is poor, and temperature is inadequate. There is scarce provision of

water.

During the first meeting after the detention, the defense lawyer of Mr. Mattsakov was not allowed to bring him food, blanket and books. The SCNS staff invoked internal strict rules that allow for parcels/personal items to be delivered to inmates only on Saturdays.

The SCNS pretrial detention center's staff reportedly refused to send Mr. Mattsakov's complaint about illegal actions of the SCNS investigator (non-notification of relatives about the detention; legality of grounds for forcing Mr. Mattsakov to sign a non-disclosure agreement, etc.) to court, although such a duty is provided for by national legislation. Mr. Mattsakov had to send his appeal challenging the legality and reasonableness of his detention via his defense lawyer.

Lack of legal certainty and presumption of innocence

On 5 December, the SCNS issued a press release in which it accused Mr. Mattsakov and his defense lawyers and supporters of politicizing the criminal case against him. The SCNS in its public statement stated that Mr. Mattsakov "fulfilling his duties and having established trustworthy relations with officials in judicial bodies appropriated 22,000 USD". The press release also bluntly stated that the lawyer "in order to conceal his crime, forged a document". This statement has been perceived by Mr. Mattsakov's defense lawyers as a violation of his presumption of innocence. They also expressed concerns that the press release indicates that the SCNS is preparing new charges against Mr. Mattsakov accusing him of corrupting judicial officials.

De facto restrictions on the exercise of the legal profession in violation of the presumption of innocence as a result of pretrial detention

As a result of Mr. Mattsakov's pretrial detention, several of his clients lost his legal services. On 9 December, as a result of non-delivery of Mr. Mattsakov from the pretrial detention center to the court, despite his earlier request submitted to the Bishkek City Court to ensure his presence during the trial, the appeal hearing against guilty verdicts against some of his clients had to be postponed. The Bishkek City Court reportedly refused to order the participation of Mr. Mattsakov during the appeal hearing. As a result, the individual was without a legal representative on 9 December, and the Bishkek City Court postponed the appeal hearing.

On 6 December, another client of Mr. Mattsakov attempted to cut his own throat in court as a protest, after the Pervomayskyi District Court of Bishkek yet again extended his pretrial detention, in the absence of his lawyer – Mr. Mattsakov.

The earlier scheduled on 12 December review by the Constitutional Court of one of Mr. Mattsakov's applications submitted long before his detention was indefinitely postponed, despite Mr. Mattsakov's written request to the

Constitutional Court asking to ensure his in-person participation in the constitutional proceedings in line with the existing legislation.

Family situation

The information suggests that Mr. Mattsakov's family would be in a vulnerable situation at the moment, since Mr. Mattsakov has three small children, and is the primary provider for the family.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our serious concern in relation to the arrest, pre-trial detention and the prosecution of Mr. Mattsakov, which appears to be directly linked to his professional activities as a defense lawyer in high-profile criminal cases of detained human rights defenders, journalists, media workers and other sensitive political cases. If confirmed, these facts would be in breach of the guarantees to which lawyers are entitled in order to perform their professional functions without any threat, intimidation, harassment or interference, and without suffering, or being threatened with, prosecution or any administrative or disciplinary sanctions for actions undertaken in accordance with professional duties and ethical standards.

We express grave concerns in regard to the alleged breaches of due process and fair trial standards during the court hearing. We are concerned about information that suggests in adequate time and facilities for the preparation of the defence of Mr. Mattsakov, especially regarding the lack of relevant documents in the file provided to the defence, and denying access to certain materials to the defense based on the imposed label of "classified/secret investigative materials" by the SCNS in relation to documents that relate to an offence that cannot benefit from national security protection clauses. Such an approach would not respect the principle of equality of arms as articulated by the Human Rights Committee in its general comment No. 32. Additionally, we are concerned about information that reports a hostile attitude from the SNCS officers in the court room, which could amount to violation of the guarantee of a fair hearing.

In connection with the above alleged facts and concerns, we would like to remind your Excellency's Government of its obligations to safeguard the right to liberty and security and the right to a fair trial, enshrined in various international human rights instruments, including the International Covenant on Civil and Political Rights, acceded to by Kyrgyzstan on 7 October 1994. The above-mentioned allegations, if substantiated, could constitute breaches of articles 9 and 14 of the ICCPR.

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 concerning the factual and legal basis for Mr. Mattsakov's arrest, pre-trial detention and judicial prosecution and indicate how these actions comply with Kyrgyzstan's obligations under international human rights law and standards.
3. Please explain how the judicial proceedings against Mr. Mattsakov are in line with international obligations and standards related to the right to a fair trial as provided by article 14 of ICCPR.
4. Please provide detailed information on the measures adopted to ensure that defense lawyers in Kyrgyzstan can carry out their peaceful and legitimate activities without fear of judicial harassment and other interference.

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.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the letter of allegation and the regular procedure.

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 accept, Excellency, the assurances of our highest consideration.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Ganna Yudkivska
Vice-Chair on communications of the Working Group on Arbitrary Detention

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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 norms contained in the International Covenant on Civil and Political Rights (ICCPR), acceded by Kyrgyzstan on 7 October 1994. In particular, we would like to refer your Excellency's Government to articles 9 and 14 of the ICCPR, which provide for the rights to liberty and security of the person, not to be subjected to arbitrary arrest or detention, to be promptly informed of the reasons for the arrest and of any charges against him or her, to be brought promptly before a judge for a fair trial which respect due process guarantees and fair trial standards.

We would like to refer to article 9 of the ICCPR, which provides that no one shall be subjected to arbitrary arrest or detention or deprived of their liberty except on such grounds and in accordance with such procedure as are established by law. 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 is arbitrary.

In regard to the right to a fair trial, we would like to refer to article 14 of the ICCPR, which sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. Article 14(2) provides the right of accused persons to be presumed innocent until proved guilty according to law. In addition, article 14(3) of the ICCPR provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including to have adequate time and facilities for the preparation of his defence and to examine, or have examined, the witnesses against him.

Regarding the inadequate time for preparation of the case, we would like to refer to general comment No. 32 of the Human Rights Committee on Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32), which stressed that the "accused persons must have adequate time and facilities for the preparation of their defence" and that "this provision is an important element of the guarantee of a fair trial and an application of the principle of equality of arms." Additionally, it states that "What counts as "adequate time" depends on the circumstances of each case. If counsel reasonably feel that the time for the preparation of the defence is insufficient, it is incumbent on them to request the adjournment of the trial." "There is an obligation to grant reasonable requests for adjournment, in particular, when the accused is charged with a serious criminal offence and additional time for preparation of the defence is needed." (Para. 32). Moreover, the access to adequate facilities "must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are

exculpatory. Exculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defence.” (Para. 33). Furthermore, the Human Rights Committee has affirmed that “a hearing is not fair if, for instance, the defendant in criminal proceedings is faced with the expression of a hostile attitude from the public or support for one party in the courtroom that is tolerated by the court, thereby impinging on the right to defence or is exposed to other manifestations of hostility with similar effects.” (Para. 25).

Furthermore, regarding the presumption of innocence until proven guilty according to law. The Human Rights Committee stated in general comment No. 32 that “the presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused.” (Para. 30).

Moreover, principle 16 of the Basic Principles on the Role of Lawyers requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. Additionally, principle 18 provides that lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions. This principle must be read in conjunction with principle 16(c), which requires national authorities to adopt all appropriate measures to ensure that lawyers are not subject to, or threatened with prosecution or any other administrative, economic or disciplinary sanctions for actions undertaken in good faith in the exercise of their professional duties and responsibilities.

In relation to the allegations indicating that the individual mentioned above is being targeted because of his activities defending human rights, 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 8 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.

We like to draw particular attention to the following provisions of the Declaration:

- Article 9 paragraph (3) point c), which provides for the right to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms;

- article 11, which provides for the right of everyone, individually and in association with other, to the lawful exercise of their occupation or profession;
- and, article 12 paragraphs (2) and (3), which provide 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.