

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Ref.: AL AZE 1/2025
(Please use this reference in your reply)

27 February 2025

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 and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 52/4, 51/8 and 51/21.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **ongoing prosecution and detention of Mr. Anar Mammadli; the alleged deterioration of his health; the alleged lack of access to adequate healthcare, exercise, and nutrition; as well as the alleged lack of progress in providing a remedy and reparations for previous violations of his rights.**

Mr. **Anar Mammadli** is a prominent Azerbaijani human rights defender. He is the chairman of the Election Monitoring and Democracy Studies Center (EMDSC), a non-governmental organization that conducts independent election monitoring and promotes civil and political rights in Azerbaijan.

We previously wrote to your Excellency's Government regarding the targeting of the EMDSC on 26 November 2013 (AL AZE 5/2013) and the criminal charges against Mr. Mammadli on 6 May 2014 (AL AZE 2/2014). We also wrote to your Excellency's Government on 28 June 2024 (AL AZE 2/2024) regarding Mr. Mammadli's prosecution and detention, searches, alleged due process violations, smear campaign against him, and the lack of an effective remedy for previous violations of his rights. We acknowledge the replies from your Excellency's Government dated 15 July 2014 and 14 August 2024 and regret not receiving a reply to communication AL AZE 5/2013. We remain concerned given the allegations below.

According to the information received:

Charges and continued detention

The charges against Mr. Mammadli have been expanded to include violations of articles 193-1.2.1 (legalisation of criminally obtained property by a group in prior collusion), 193-1.3.2 (legalisation of criminally obtained property in a significant amount), 206.3.1 (repeated smuggling), and 206.3.2 (smuggling by a group in prior collusion) of the Criminal Code. If convicted, he reportedly faces seven to 12 years in prison.

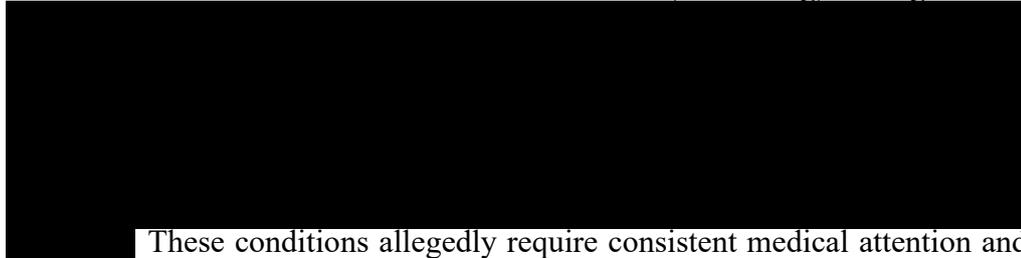
Mr. Mammadli remains at the Baku Detention Centre (also known as Baku Investigation Isolator). On 22 August 2024, the Khatai District Court in Baku extended his detention until 27 November 2024. On 20 November 2024, it extended the detention again until 27 February 2025, rejecting a motion for house arrest. The rulings were based on generic references to the nature of the charges, public danger, and alleged high risks of obstructing or evading investigation. The court allegedly failed to conduct an individualised assessment, substantiate it with evidence, and fully consider the defence’s arguments. The Baku Court of Appeal upheld the decisions on 28 August 2024 and 26 November 2024. The courts allegedly relied on prosecution materials without granting the defence access to them.

Delay in execution of the Mammadli v. Azerbaijan judgement

We note the information provided in your Excellency’s Government’s response dated 14 August 2024 regarding the Plenum of the Supreme Court’s ongoing review of Mr. Mammadli’s previous criminal case, in accordance with the European Court of Human Rights’ ruling in *Mammadli v. Azerbaijan* (application No. 47145/14), dated 19 April 2018, which identified violations of his rights. We also note the clarification that the current investigation is unrelated to that ruling. However, we subsequently received information suggesting a lack of progress with the review and the prosecuting authorities’ treatment of Mr. Mammadli’s prior conviction as an aggravating factor, potentially leading to a harsher punishment in the ongoing criminal case.

Health condition and access to adequate healthcare

According to the information received, Mr. Mammadli has been suffering from several chronic conditions since before his arrest, including, among others:



These conditions allegedly require consistent medical attention and specialised treatment, as well as specific diet, special bedding, and exercise.

He was provided with some medical examinations and tests on 1 May, 12 July, and 26 July 2024. However, the examination on 1 May was general, conducted routinely for all detainees, and did not address Mr. Mammadli’s specific conditions. The ultrasound on 12 July – which additionally revealed [REDACTED] – and the blood test on 26 July were reportedly inadequate to assess his health complaints.

Following his arrest in April 2024, and especially since September 2024, Mr. Mammadli’s health has reportedly significantly deteriorated. He and his lawyers allegedly raised this with the authorities in September, and on 7 October 2024, submitted a formal request for a medical examination by specialists in a private clinic. It was addressed to the Medical Department of the Ministry of

Justice, the Minister of Justice, the Minister of Internal Affairs, the Head of the Baku Detention Centre, the Head of the Investigation Department of the Baku City Main Police Department, the Baku City Prosecutor, and the Commissioner for Human Rights (Ombudsman).

On 16 October 2024, Mr. Mammadli's lawyers publicised the lack of response to his requests. Following media attention, Mr. Mammadli was examined by the detention centre doctors between 17 and 20 October 2024. However, according to the information received, he was only given a blood test and an ultrasound, without a comprehensive examination or access to specialists, the doctors involved lacked expertise in treating his conditions, and they did not provide him with the examination results.

On 23 October 2024, the lawyers appealed the failure to provide the requested medical examination. On 16 November 2024, the Khatai District Court dismissed their appeal citing the detention centre's position that a medical examination was not needed, without considering any other evidence, such as the results of examination in October, and on 27 November 2024 the Baku Court of Appeal upheld the decision on the same grounds.

On 25 November 2024, the lawyers received a letter from the Medical Department of the Ministry of Justice stating that Mr. Mammadli's condition was satisfactory and he had access to qualified doctors in detention, which was allegedly not true. The examination results have allegedly not been provided to Mr. Mammadli or his lawyers.

In addition to pain suffered by Mr. Mammadli and other symptoms outlined above, the delay in providing the appropriate medical examination and treatment is allegedly causing serious and irreversible harm to his health.

Access to adequate diet and exercise

In your Excellency's Government's reply dated 14 August 2024, it stated that Mr. Mammadli was provided with daily outdoor exercise of not less than two hours and engagement in sports. However, subsequent information indicates that such access is allegedly not available to detainees in his detention facility. We also thank your Excellency's Government for confirming that Mr. Mammadli receives free meals. However, subsequent information indicates that these meals do not comply with his dietary requirements.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our deep concern about the alleged lack of access to adequate healthcare, exercise, and nutrition for Mr. Mammadli, which are reportedly causing pain and suffering and irreversible harm to his health.

We also reiterate our serious concern that the ongoing prosecution and detention of Mr. Mammadli appear to be linked to his legitimate human rights and election observation activities and the exercise of the right to freedom of expression and might constitute acts of intimidation and reprisals for engaging with the United Nations, its representatives and mechanisms in the field of human rights. Furthermore, we are

concerned that Mr. Mammadli is allegedly facing a long-term prison sentence and that decisions regarding the extension of his detention appear to be formalistic, without an objective assessment of the circumstances. The allegations that the defence is denied access to materials used in court proceedings raises significant concerns about the fairness of the trial.

Finally, we remain concerned that there has reportedly been no progress in reviewing Mr. Mammadli's previous criminal case, in accordance with the European Court of Human Rights' ruling in *Mammadli v. Azerbaijan*, which identified violations of his rights, and that his prior conviction may allegedly serve as an aggravating circumstance in ongoing criminal proceedings.

In this context, we strongly reiterate our grave concern about the chilling effect on human rights defenders and those exercising their right to freedom of expression in Azerbaijan.

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 an update on Mr. Mammadli's charges and reasons for his ongoing detention and explain how these are compatible with the obligations of your Excellency's Government under international human rights law.
3. Please provide an update on the Plenum of the Supreme Court's review of Mr. Mammadli's previous criminal case and please indicate the steps taken to ensure that his prior conviction is not treated as an aggravating circumstance in the current proceedings.
4. Please provide information on the measures taken to ensure Mr. Mammadli's access to appropriate medical care and treatment, including comprehensive medical care and treatment by specialists at a private clinic as requested on 7 October 2024, as well as the provision of necessary conditions for his health (including exercise and nutrition) while in pre-trial detention. Additionally, please specify the date Mr. Mammadli received the results of the medical examination and tests (including blood test and ultrasound) conducted between 17-20 October 2024 or explain why they have not been provided.

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 allegation letter 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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

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 refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights ("ICCPR"), acceded to by Azerbaijan on 13 August 1992. It requires the States parties to guarantee the right to freedom of expression, including the right to seek, receive, and impart information and ideas of all kinds. As interpreted by the Human Rights Committee in general comment No. 34 (CCPR/C/GC/34), such information and ideas include, *inter alia*, political discourse, commentary on public affairs, and discussion of human rights (paragraph 11). All forms of expression and means of their dissemination are protected (paragraph 12).

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19(3) of the ICCPR. This means that they must (1) be "provided by law"; (2) be necessary for respect of the rights or reputations of others or for the protection of national security or of public order (*ordre public*), or of public health or morals; and (3) conform to the strict tests of necessity and proportionality (paragraph 22). Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated (*Id.*). Article 19(3) may never be invoked as a justification for the muzzling of any advocacy of democratic tenets and human rights (paragraph 23). Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including, *inter alia*, such forms of attack as arbitrary arrest, be compatible with article 19 (*Id.*). It is the States parties' duty to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (*Id.*). All such attacks should be vigorously investigated in a timely fashion, the perpetrators be prosecuted, and the victims receive appropriate forms of redress (*Id.*). When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat (paragraph 35).

Concerning Mr. Mammadli's continued detention, we would like to refer your Excellency's Government to article 9 of the ICCPR, which states that everyone has the right to liberty of person. 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. It shall not be the general rule that persons awaiting trial shall be detained in custody. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

As emphasised by the Human Rights Committee in general comment No. 35 (CCPR/C/GC/35), deprivation of liberty must not be arbitrary and must be carried out with respect for the rule of law (paragraph 10). As interpreted by the Human Rights

Committee, 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, is arbitrary. Arrest or detention on discriminatory grounds is also in principle arbitrary (Id.). 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.

The Human Rights Committee also reiterated that it should not be the general practice to subject defendants to pre-trial detention (paragraph 38). Detention pending trial must be based on an individualised determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime (Id.). The relevant factors should be specified in law and should not include vague and expansive standards such as “public security.” Pre-trial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances (Id.). Neither should pre-trial detention be ordered for a period based on the potential sentence for the crime charged, rather than on a determination of necessity (Id.). Courts must examine whether alternatives to pre-trial detention, such as bail, electronic bracelets or other conditions, would render detention unnecessary in the particular case (Id.).

Concerning proceedings listed in allegations above, we would like to refer your Excellency’s Government to article 14 of the ICCPR, which enshrines the right to equality before courts and tribunals and to a fair and public hearing by a competent, independent, and impartial tribunal established by law if the person faces any criminal charges or if their rights and obligations are determined in a suit at law.

As interpreted by the Human Rights Committee in general comment No. 32 (CCPR/C/GC/32), the right to equality before courts and tribunals guarantees, among other things, equality of arms, and ensures that the parties to the proceedings in question are treated without any discrimination (paragraph 8). This means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant (paragraph 13). Equality of arms also demands, inter alia, that each side be given the opportunity to contest all the arguments and evidence adduced by the other party (Id.). Fairness of proceedings entails the absence of any direct or indirect influence, pressure, intimidation, or intrusion from whatever side and for whatever motive (paragraph 25). The requirement of impartiality has two aspects (paragraph 21). First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one

of the parties to the detriment of the other (Id.). Second, the tribunal must also appear to a reasonable observer to be impartial (Id.).

We would also like to refer your Excellency's Government to the UN Basic Principles on the Role of Lawyers, adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba. According to principle 21, it is the duty of the competent authorities to ensure lawyers access to appropriate information, files, and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

Concerning the alleged lack of progress with the review of Mr. Mammadli's previous criminal case, we would like to remind your Excellency's Government of article 2(3) of the ICCPR, which guarantees the right to an effective remedy. As the Human Rights Committee emphasised in general comment No. 31 [80] (CCPR/C/21/Rev.1/Add.13), article 2(3) requires that States parties make reparation to individuals whose ICCPR rights have been violated (paragraph 16). In addition to the explicit reparation required by article 9(5) and article 14(6), the Committee considers that the ICCPR generally entails appropriate compensation (Id.). The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation, and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition, changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations (Id.). Even when the legal systems of States parties are formally endowed with the appropriate remedy, violations of Covenant rights still take place; this is presumably attributable to the failure of the remedies to function effectively in practice (paragraph 20).

In relation to Mr. Mammadli's health, we would like to first refer your Excellency's Government to article 6 of the ICCPR, which protects the supreme and non-derogable right to life. The Human Rights Committee in its general comment No. 36 (CCPR/C/GC/36) states that this right concerns the entitlement to be free from acts and omissions that are intended or may be expected to cause unnatural or premature death, as well as to enjoy a life with dignity (paragraph 3). This applies to all without any distinction, including persons suspected or convicted of crimes (Id.). States parties have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, including providing them with the necessary medical care and treatment, and appropriately regular monitoring of their health, since by arresting, detaining, imprisoning, or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their life and bodily integrity (paragraph 25). States parties may not rely on lack of financial resources or other logistical problems to reduce this responsibility (Id.).

We would also like to recall your Excellency's Government's obligations under article 12 of the International Covenant on Economic, Social, and Cultural Rights, which Azerbaijan acceded to on 13 August 1992, establishing the right to the enjoyment of the highest attainable standard of physical and mental health. According to article 12(2)(d), the steps to be taken by the States Parties to achieve the full realisation of this right shall include those necessary for the creation of conditions which would assure to all medical service and medical attention in the event of sickness. As

interpreted by the Committee on Economic, Social, and Cultural Rights in general comment No. 14 (E/C.12/2000/4), States must ensure provision of healthcare (paragraph 36) and refrain from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative, and palliative health services (paragraph 34). The denial of access to health facilities, goods, and services to particular individuals or groups as a result of de jure or de facto discrimination and the deliberate withholding or misrepresentation of information vital to health protection or treatment are specifically mentioned among violations of the right to health (paragraph 50). Any victim of a violation of the right to health should have access to effective judicial or other appropriate remedies and should be entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction, or guarantees of non-repetition (paragraph 59).

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, enshrined in article 7 of the ICCPR and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which Azerbaijan acceded to on 16 August 1996.

Additionally, we would like to remind your Excellency's Government of article 10 of the ICCPR, which requires that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

In this regard, we would also like to refer your Excellency's Government to the UN Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules"), adopted by the UN General Assembly on 17 December 2015 (A/RES/70/175), which establish States' responsibility to treat all prisoners with the respect due to their inherent dignity and value as human beings and protect them from torture and other cruel, inhuman, or degrading treatment or punishment (rule 1); provide food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served (rule 22); provide at least one hour of suitable exercise in the open air daily if the weather permits to every prisoner who is not employed in outdoor work and for persons of suitable age and physique – also physical and recreational training during the period of exercise and installations and equipment (rule 23); provide healthcare for prisoners (rules 24 to 35); guarantee the same standards of healthcare that are available in the community and access to necessary health-care services free of charge without discrimination on the grounds of prisoners' legal status (rule 24(1)); organise health-care services in close relationship to the general public health administration and in a way that ensures continuity of treatment and care (rule 24(2)); evaluate, promote, protect, and improve the health of prisoners, paying particular attention to prisoners with special health-care needs (rule 25(1)); provide to prisoners upon request their accurate and up-to-date individual medical files (rule 26); ensure prompt access to medical attention in urgent cases and ensure transfer to specialised institutions or civil hospitals of prisoners who require specialised treatment (rule 27). Additionally, an untried prisoner shall be allowed to be visited and treated by his or her own doctor or dentist if there are reasonable grounds for the application and he or she is able to pay any expenses incurred (rule 118).

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 Recognised 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 strive for the protection and realisation 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 6(a)-(c), which provides for the right to know, seek, obtain, receive, and hold information about all human rights and fundamental freedoms; 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 provides for the right to benefit from an effective remedy and to be protected in the event of the human rights violations; and
- 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.

We would like to draw your Excellency's Government's attention to Human Rights Council resolutions 12/2, 24/24, 36/21, 42/28, 48/17, and 54/24 reaffirming the right of everyone, individually and in association with others, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. The Human Rights Council urges States to prevent and refrain from all acts of intimidation or reprisal, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies to promote a safe and enabling environment for engagement with the United Nations on human rights and to effectively protect those who seek to cooperate, cooperate, or have cooperated with the United Nations. The Council also calls upon States to combat impunity by conducting prompt, impartial, and independent investigations and ensuring accountability for all acts of intimidation or reprisal, and by condemning publicly all such acts, underlining

that these can never be justified, to provide, in accordance with their international human rights obligations and commitments, access to effective remedies for victims, and to prevent any recurrence.

Finally, in view of potential long-term sentence, we would like to refer your Excellency's Government to recommendations in the report on the long-term detention of human rights defenders (A/76/143), in which the Special Rapporteur on the situation of human rights defenders emphasised that States should immediately and unconditionally release all detained human rights defenders and cease jailing them for their legitimate work (paragraph 158(a), (b)). States should also stop subjecting them to unfair trials, torture or cruel, inhuman, or degrading treatment, and ensure their legal rights (paragraph 158(c)-(e)). Furthermore, adequate care should be provided to detained defenders, including access to medical treatment and adequate nutrition (paragraph 158(j)).