

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE: AL
KGZ 1/2016:

30 May 2016

Dear Mr. Mukashev,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 25/18, 26/7, 24/5 and 25/2.

In this connection, we would like to bring to the attention of your Government information we have received concerning alleged telephone threats against human rights lawyer, Mr. **Sardorbek Abdukhalilov**.

Mr. Sardorbek Abdukhalilov is a human rights lawyer and staff at Public Association “Spravedlivost” Jalal-Abad Human Rights Organisation. Mr. Abdukhalilov litigates cases in the area of arbitrary detention, torture and other cruel, inhumane or degrading treatment or punishment on behalf of victims.

Spravedlivost is a non-profit, non-governmental organisation that aims to promote the rule of law and human rights, and combats torture by providing legal assistance to victims. As a member of the Coalition Against Torture in Kyrgyzstan, Spravedlivost prepares reports regarding the implementation by the Kyrgyz Republic of its obligations under international human rights law. Spravedlivost was named as the 2014 winner of the Max van der Stoep Award, for its work in promoting and protecting the rights of national and ethnic minorities.

According to the information received:

On 24 December 2015, Mr. Abdukhalilov submitted a legal complaint before Jalal-Abad city court on behalf of a client to recognize and judicially establish that the detention conditions of the temporary detention facility (TDF) of Jalal-Abad

city police department are discriminatory on the basis of gender and constitute inhuman or degrading treatment. His client, a woman, had been detained at the TDF of Jalal-Abad police department during seven months in 2014 and 2015, and was seeking accountability for alleged violations she faced during her detention through the court. In response to the complaint, the police department reportedly admitted that the detention conditions at the TDF did not meet national standards.

On 26 January 2016, at 10:00 a.m., Mr. Abdukhalilov received a summons from Jalal-Abad city court, informing him that the complaint would be considered before the court the following day at 10:00 a.m. However, on 27 January, due to the absence of the prosecutor of Jalal-Abad city, the court did not consider the case. The case has since been postponed three more times.

On 26 January 2016, at approximately 4:30 p.m. Mr. Abdukhalilov received several phone calls on his mobile phone from an unknown number. When he answered, the caller was recognized by Mr. Abdukhalilov as Mr. Islam Sheraliev, head of the TDF of Jalal-Abad police department. Mr. Sheraliev used obscene language, insulting Mr. Abdukhalilov and threatening him with physical harm. While referring to his ethnic background, the caller allegedly stated: “you lawyers are stinking too much, because my boss told me about your complaint to the court. It is time to initiate some charges against you.”

On 27 January 2016, Mr. Abdukhalilov filed a complaint to the Prosecutor’s Office of Jalal-Abad city and Jalal-Abad regional police department, requesting that the circumstances of the menacing phone call be investigated.

On 29 January 2016, the Prosecutor’s Office of Jalal-Abad city reportedly instructed the Jalal-Abad regional police department to conduct an internal investigation into the complaint. The Prosecutor’s Office has yet to decide if Mr. Sheraliev will face criminal liability.

Concern is expressed about the threats received by Mr. Abdukhalilov, as they seem to be directly linked to the legitimate discharge of his professional functions as a lawyer, human rights activities, as well as exercise of his rights to freedom of expression and association through his work at “Spravedlivost” Jalal-Abad Human Rights Organisation.

In connection with the above alleged facts and concerns, please refer to the **Reference to international human rights law Annex** 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 any comment you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any investigation carried out into the alleged threats against Mr. Abdukhalilov. If no inquiries have taken place, or if they have been inconclusive, please explain why. Please provide the full details of any prosecutions, which may have been taken place or be underway in this case.
3. Please provide information about measures taken to protect the physical and psychological integrity of Mr. Abdukhalilov and other members of Spravedlivost from similar threats related to their legitimate human rights activities.
4. Please indicate what measures have been taken to ensure that lawyers and human rights defenders in Kyrgyzstan are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days.

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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards.

The allegations described above seemed to be in contravention of the UN Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. In particular, principle 16 clearly states that Governments shall ensure that lawyers, such as Mr. Abdukhalilov, are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. Principle 17 further stipulates that the authorities shall adequately safeguard the security of lawyers where it is threatened as a result of discharging their functions.

With regard to the allegations that the threats against Mr. Abdukhalilov may be related to his work as a human rights defender and member of the Public Association “Spravedlivost” Jalal-Abad Human Rights Organisation, we would like to refer your Excellency’s Government to articles 19 and 22 of ICCPR, acceded to by Kyrgyzstan on 7 October 1994, which protect the fundamental rights to freedom of expression and of association. Furthermore we refer to article 2 (3) (a) of the ICCPR, which ensures that any person whose rights or freedoms recognized by ICCPR are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

Moreover, we would like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, articles 1 and 2 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. Furthermore, articles 5 and 6 provide for the right to form, join and participate in non-governmental organizations, associations or groups, as well as for the right to discuss and hold opinion of all human rights and fundamental freedoms and to draw public attention to those matters. Article 12 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 his or her legitimate exercise of the rights referred to in the Declaration.

Finally, we would also like to refer to Human Rights Council resolution 22/6, which urges States to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy and the rule of law.