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Working Group on Arbitrary Detention

REFERENCE: G/SO 218/2

19 March 2014

Dear Mr. Gabbero,

I would like to refer to the sixty-eighth session of the Working Group on Arbitrary Detention, during which the Working Group adopted several Opinions on cases of detention submitted to it.

In accordance with paragraph 18 of the Working Group's Methods of Work, I am sending to you, attached herewith, the text of Opinion No. 59/2013 (Azerbaijan) regarding a case submitted by you.

This Opinion will be reflected in the Working Group's annual report to the Human Rights Council and published on the Working Group's website.

Yours sincerely,

Miguel De la Lama
Secretary of the Working Group on Arbitrary Detention
Office of the High Commissioner for Human Rights

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Opinions adopted by the Working Group on Arbitrary Detention at its sixty-eighth session, 13–22 November 2013

No. 59/2013 (Republic of Azerbaijan)

Communication addressed to the Government on 9 August 2013

Concerning Hilal Mammadov.

The Government replied to the communication on 14 October 2013.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

- (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);
- (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
- (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case summarized below was reported to the Working Group on Arbitrary Detention.

4. Hilal Mammadov, born in 1959 in Astara Rayon, Azerbaijan, is an Azerbaijani journalist and a defender of minority rights. Since 9 June 2012, he has been the editor-in-chief of the Baku-based newspaper Tolishi Sado (The Voice of Talysh), the only newspaper printed in the minority Talysh language.

5. The source informs the Working Group that the Talysh people are an ethnic minority residing in southern Azerbaijan.

6. On 21 June 2012, Mr. Mammadov was arrested by the Nasimi District Police pursuant to article 234.4.3 of the Criminal Code of Azerbaijan in relation to illegal manufacture, purchase, storage, transfer, transport or sale of drugs in a large quantity. According to the source, the authorities alleged that they had seized five grams of heroin from his person, and approximately 30 grams from his place of residence.

7. On 22 June 2012, the Nasimi District Court (Baku City) sentenced Mr. Mammadov to three months' detention. Mr. Mammadov appealed the sentence and requested to be permitted to serve the term under house arrest. On 10 September 2012, the Baku Appeal Court upheld the original decision, denying him provisional release. Mr. Mammadov remains in detention to this day.

8. On 22 June 2012, Mr. Mammadov met with his lawyer, who saw injuries on his leg. He photographed them and filed a complaint of torture.

9. On 4 July 2012, the Ministry of the Interior and the Office of the Prosecutor General of Azerbaijan issued a joint statement reportedly contradicting the accusations made against Mr. Mammadov regarding the illegal possession of drugs. The statement read that Mr. Mammadov was arrested on the basis of information received about his alleged "cooperation with the intelligence agency of a foreign country", "activities against the security and the territorial integrity of Azerbaijan" and "incitement of national, racial and religious hatred". According to the statement, Mr. Mammadov had been operating as a foreign secret-service agent for the past 20 years.

10. Mr. Mammadov was subsequently charged under articles 274 (treason) and 283.2.2 (inciting national, racial, social and religious hatred, hostility and ethnic discrimination) of the Criminal Code. According to the source, investigators confiscated a notebook computer and hard drives from Mr. Mammadov for evidentiary purposes. The criminal charges against him brought by the Nasimi District Prosecutor's Office were transferred to the Grave Crimes Investigation Department of the Office of the Prosecutor General.

11. On 12 July 2012, Mr. Mammadov was reportedly transported in a cramped car, along with 20 drug addicts and tuberculosis sufferers, to the Republican Drug

Rehabilitation Centre, where he was ordered by the Grave Crimes Investigation Department to undergo a blood and urine examination for drug use. At the hospital, Mr. Mammadov refused the examination. He alleged that he had been brutally beaten by employees of the Ministry of the Interior. According to the source, Mr. Mammadov considered the examination to be degrading to his personal honour and viewed it as an attempt on his life. The source notes that the examination was scheduled 21 days after Mr. Mammadov had been sentenced to pretrial detention on drug-related charges.

12. On 25 July 2012, Mr. Mammadov's lawyers appealed his three-month detention sentence. On 9 August 2012, a judge ordered the appeal to be referred to the Appeal Court.

13. On 31 July 2012, the Nasimi District Court (Baku City) denied Mr. Mammadov's complaint of torture and ill-treatment during his pretrial detention, whereupon his lawyers submitted that the investigating authorities had violated the Criminal Procedure Code of Azerbaijan. The judge of the Nasimi District Court decided that the lawsuit brought by Mr. Mammadov did not comply with the provisions of article 449 (complaints to the court concerning procedural acts or decisions of the prosecuting authority) of the Criminal Procedure Code, and closed the hearing without permitting further arguments to be heard from his lawyers.

14. On 27 August 2012, the Deputy Prosecutor General refused to reopen the proceedings. On 29 August 2012, in a closed hearing, the Nasimi District Court rejected Mr. Mammadov's appeal of the 31 July 2012 decision.

15. The source reports that on 8 November 2012, the Sabail District Court (Baku City) rejected Mr. Mammadov's complaint of torture and ill-treatment suffered in the context of his arrest. The complaint took into account the opinion of a forensic examination that the injuries on his legs may have been caused in the context of his arrest and a previous decision by the Nasimi District Court.

16. On 19 November 2012, the Baku Appeal Court upheld the decision of the Sabail District Court. Mr. Mammadov's lawyers announced their intention to bring the matter before international bodies.

17. On 28 November 2012, Mr. Mammadov's lawyers reported that, following the completion of the investigation into the criminal charges against him, Mr. Mammadov was charged under article 274 (high treason), article 283.2.2 (incitement to national, racial or religious hostility) and articles 234.4.3 (illegal manufacturing, purchase, storage, transportation, transfer or selling of narcotics and psychotropic substances) of the Criminal Code.

18. On 21 December 2012, the hearing of Mr. Mammadov's criminal charges was reportedly transferred to the Baku Grave Crimes Court. A preparatory session defining the procedural issues of the case took place on 9 January 2013. On that date, Mr. Mammadov's lawyer reportedly submitted two motions: one requesting an audio-visual recording of the hearing; and another requesting that his client be allowed to sit beside his lawyer rather than behind secure bars. The source informs the Working Group that both motions were rejected.

19. The source was informed by the Human Rights Centre of Azerbaijan that Mr. Mammadov had been beaten and injured by his cellmate in a Kurdakhani prison on 26, 28 and 29 November 2012. The source reports that Mr. Mammadov was placed in the cell two weeks prior to the attacks. Mr. Mammadov's lawyers had requested on several occasions that he be removed from the cell as his cellmate's behaviour was aggressive to the point of preventing him from sleeping at night. Those requests were all ignored. On 29 November 2012, his cellmate was transferred to the medical unit of the prison hospital for treatment of his reportedly severe mental illness.

20. The source considers the ongoing harassment of Mr. Mammadov as an attempt to silence his efforts to report on human rights violations. The source points out that Mr. Mammadov's arrest came shortly before the first edition of the Tolishi Sado newspaper under his authority as editor-in-chief was due to be published (at the end of June 2012). He was arrested after posting music and a video clip on the Internet which attracted attention to the Talysh culture.

21. The source submits that Mr. Mammadov faces imprisonment sentences ranging up to life for trumped-up charges brought against him successively in June and July 2012, and most recently in November 2012.

22. The source signals its concern with regard to Mr. Mammadov's conditions of detention in the light of the fate that befell Novruzali Mammadov¹, the former editor-in-chief of the Tolishi Sado newspaper, who was allegedly subjected to similar acts of harassment and arbitrary detention in 2007, and who died in custody on 17 August 2009.

23. The source concludes that the detention of Hilal Mammadov is arbitrary and considers it an obvious attempt to silence his efforts to report on human rights violations. Furthermore, his rights to legal protection have been violated.

24. The source further expresses its fears for the physical and psychological integrity of Mr. Mammadov.

Response from the Government

25. The Government submitted its response by way of note verbale on 14 October 2013, with a report on the case by the Office of the Prosecutor General of the Republic of Azerbaijan. The Working Group wishes to express its appreciation for the Government's cooperation in this case.

26. The Government confirms that a case was opened under article 234.4.3 of the Criminal Code of the Republic of Azerbaijan, and that an investigation was conducted on 21 June 2012 in the Investigation Office of the Baku City Nizami District Police Station on the grounds that Mr. Mammadov had illegally obtained a large amount of drugs from an unknown source at an unidentified time for the purpose of sale, namely 33,475 grams of heroin, including 28,294 grams found at his place of residence and 5,181 grams on his person.

27. The Government states that Mr. Mammadov was detained as a suspect on 21 June 2012, accused under article 234.4.3 of the Criminal Code and sentenced to imprisonment by the Baku City Nizami District Court on the same date. The lawyer for the accused filed a complaint before the Baku Appeal Court, requesting cancellation of Mr. Mammadov's imprisonment sentence. According to the decision of the Baku Appeal Court, dated 5 July 2012, the three-day appeal period provided for in article 452.1 of the Criminal Procedure Code had expired and the materials had been returned to the Nizami District Court in fulfilment of the requirements of the mentioned article.

28. According to the order of the Prosecutor General of the Republic of Azerbaijan, dated 29 June 2012, the criminal investigation was transferred to the Grave Crimes Investigation Department of the General Prosecutor's Office. The Government informs the Working Group that the preliminary investigation into the criminal case of Mr. Mammadov was conducted jointly with an investigation by the Main Investigation Department of the Ministry of National Security regarding the possible secret collaboration since 1992

¹ No relation to Hilal Mammadov.

between Mr. Mammadov and one Abdoli Ali Hamzali, a special service agent of the Ministry of Information and Security of the Islamic Republic of Iran.

29. According to the Government, the investigation affirmed that Mr. Mammadov had collected necessary information in order to accomplish hostile activities against the Republic of Azerbaijan, in contradiction with its sovereignty, national security and territorial integrity. Through his activities, which resulted in an image of the Republic of Azerbaijan as a country where human rights and freedoms were violated, Mr. Mammadov had committed high treason by espionage activities. In addition, Mr. Mammadov and Abdoli Ali Hamzali had delivered speeches harming the trust and respect for the lifestyle, culture, traditions and history of the population groups residing in Azerbaijani territory and leading to the incitement of hostility among said groups. Mr. Mammadov had reportedly also published articles in Tolishi Sado, of which he was the editor-in-chief, and in translated books, where his appeals reflected anti-Government information and incitation to national-religious conflict in order to undermine the constitutional structure of the country.

30. The Government reports that Mr. Mammadov's participation in hostile activities included instructions and tasks aimed at initiating nationalist propaganda and raising awareness of the Talysh problem. It claims that this led to the establishment in 1992 of the National Talysh Party, which was renamed and registered in 1993 as the Azerbaijani Political Party of the Equality of Nations. Mr. Mammadov was elected as the head of the party and led the process of creating a "Talysh government". The Government's response gives details of the various activities undertaken by Mr. Mammadov in this respect.

31. The Government also reports that, following the 1993 events in the Talysh Mugan Republic, Mr. Mammadov fled to Saint Petersburg, Russia, on 25 August 1993. While living there, he declared the restoration of the Azerbaijani Political Party of the Equality of Nations in 2002, and reinforced the propaganda in order to draw Talysh people living there into party activities. It states that Mr. Mammadov addressed Azerbaijani supporters with regard to the restoration of the native supporter groups, highlighted the future assistance of the Islamic Republic of Iran for the improvement of the activities of the Azerbaijani Political Party of the Equality of Nations, published speeches against the Republic of Azerbaijan in Tolishi Sado, and made efforts to benefit from businessmen of Talysh origin. Mr. Mammadov had also established a close relationship with the Armenian community in the Russian Federation.

32. On 14 June 2006, Mr. Mammadov reportedly visited the Islamic Republic of Iran at the private invitation of Abdoli Ali Hamzali to attend a conference on Talysh culture in the city of Rasht. During his stay there, he allegedly met with Akbar Pakravash, another special service agent of the Islamic Republic of Iran, and received certain instructions to continue various forms of propaganda on the violation of the human rights of the Talysh people. The Government reports that Mr. Mammadov, as the editor-in-chief of Tolishi Sado newspaper, had published more than 100 editions of the newspaper and sent them to the Islamic Republic of Iran with material support provided by special service agents of that country.

33. The Government also reports that Mr. Mammadov gave biased and untrue interviews on a number of occasions about the difficult life of the Talysh people, violations of their human rights, and that they were facing assimilation as a result of a policy under consideration by the Republic of Azerbaijan.

34. The Government reiterates that Mr. Mammadov had moreover illegally obtained a large amount of drugs from an unknown source for the purpose of sale, namely 33,475 grams of heroin, including 28,294 grams at his place of residence and 5,181 grams on his person.

35. According to the Government, Mr. Mammadov was recharged under articles 274, 283.2.2 and 234.4.3 of the Criminal Code of the Republic of Azerbaijan on 3 July 2012 and

23 November 2012. His lawyers filed a petition before the Nasimi District Court (Baku City) requesting to replace the sentence of imprisonment with house arrest. The petition was denied, taking into account the fact that he had committed a grave crime, according to the judgment of the Nasimi District Court dated 1 September 2012, the nature of the crime, the danger of the crime for the public, and the risk that he might evade investigation, abscond or influence witnesses. The lawyers appealed the judgment before the Baku Appeal Court; the appeal was denied in a judgment dated 10 September 2012.

36. Furthermore, the Government informs the Working Group that the Office of the Prosecutor General had conducted an examination of the appeal concerning torture and other illegal acts to which Mr. Mammadov was allegedly subjected during the preliminary investigation. However, the complaint of battery by officers of the main Department on Drugs of the Ministry of Internal Affairs while in detention, and the physical violence against him was not confirmed. The decision dated 27 August 2012 refused to open a case under article 39.1.1 of the Criminal Procedure Code.

37. Subsequently, Mr. Mammadov appealed to the Court, in compliance with the rules of judicial review, to adopt a decision on the violation of his right not to be subjected to torture, inhuman and degrading treatment as provided for in article 3 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The complaint was defined as ill-founded and rejected in a judgment dated 29 August 2012. Mr. Mammadov's lawyer appealed the judgment of the Nasimi District Court dated 29 August 2012; the appeal was defined as alleged, and denied in the judgment of the Baku Appeal Court on 14 September 2012.

38. The Government reports that a separate proceeding was conducted on 22 November 2012 in relation to the criminal case relating to charges against Abdoli Ali Hamzali, under article 276 of the Criminal Code of Azerbaijan. On 20 December 2012, the indictment relating to the criminal case was confirmed by the Deputy Prosecutor General and the criminal case was subsequently transferred to the Baku Grave Crimes Court.

39. The criminal case was subjected to judicial review further to the judgment of the Baku Grave Crimes Court dated 10 January 2013. The decision intends to examine the evidence relating to the charges against Mr. Mammadov under articles 274 and 283.2.2 of the Criminal Code in a closed hearing, and other evidence in public hearings. According to the Government, evidence was collected and examined and the judicial investigation was completed on 21 August 2013.

40. On 11 September 2013, the Prosecutor requested that Mr. Mammadov be sentenced to six years' imprisonment in compliance with articles 62 and 63.3 of the Criminal Code, for charges under articles 274, 283.2.2 and 234.4.3 of the Criminal Code.

41. Court appearances were reportedly pending at the time of the Government's response.

Comments from the source

42. The Working Group received comments from the source on 12 November 2013, in which the source highlights that no satisfactory explanation was given in the Government's response regarding: (1) the question of the arbitrary character of the charges against Mr. Mammadov; (2) the ill-treatment to which Mr. Mammadov has been subjected in detention and the concerns for his health; and (3) the groundless rejection of Mr. Mammadov's application to have his trial hearings recorded by audio-visual means.

43. As regards the arbitrary character of the charges, the source reiterates that the charges brought against Mr. Mammadov were hurriedly fabricated in order to deprive him

of his liberty and thus prevent him from continuing his activities in defence of minority rights.

44. The source informs the Working Group that in January 2012 Mr. Mammadov had posted a video on the Internet to raise awareness about the Talysh community. The video became famous throughout the entire post-Soviet region, reaching over 20 million hits. In June 2012, a crew from the Russian television channel NTV travelled to Azerbaijan to make a documentary about Hilal Mammadov and his activities. On 13 June 2012, the TV crew attended a Talysh festival in the village of Archivan, Azerbaijan. Although Mr. Mammadov had been warned by the Azeri authorities that he would face reprisals if he maintained the festival, he proceeded with the organization of the event. The source reports that he was later followed and threatened.

45. The source states that on 19 June 2012, a prisoner made two statements to the Azerbaijan authorities, visibly under pressure. He alleged that Mr. Mammadov had told him six years earlier that he was selling drugs, that he was a famous drug dealer and that he had killed people. The prisoner also alleged that Mr. Mammadov had told him that he was a traitor to the nation, an agent working on behalf of the Islamic Republic of Iran and that he was inciting interethnic hatred.

46. Two days later, on 21 June 2012, Mr. Mammadov was arrested in the street and charged with a drug-related crime under article 234.4.3 of the Criminal Code (illegal manufacture, purchase, storage, transfer, transport or sale of drugs in a large quantity), which provides for up to 12 years' imprisonment. Mr. Mammadov's lawyer reported that during the arrest, he was beaten and racial insults were shouted at him. The authorities claimed to have found five grams of heroin in his pocket. His lawyer further asserted that on the same day, his house was searched without any warrant and without authorization from the landlord. In addition, the members of Mr. Mammadov's family who were present during the search were not informed of their rights. The source alleges that the authorities who carried out the search subsequently planted drugs in the apartment, but did not mention the weight and nature of the alleged narcotics in their report. The same witnesses to Mr. Mammadov's arrest in the street were present during the search. The source reports that the fabricated charges enabled the Nasimi District Court to sentence Mr. Mammadov expeditiously on 22 June 2012 to three months of pretrial detention. It considers that the obvious aim of the first set of charges was to deprive him of his liberty, pending a trial.

47. Following a second search of his house on 25 June 2012, the drug-related charges were supplemented with the completely different charges of "treason" and "incitement to national, racial, social and religious hatred and hostility".

48. According to the comments from the source, on 4 July 2012, about two weeks after Mr. Mammadov's arrest on suspicion of illegal possession of drugs, the drug-related accusations were contradicted by a joint statement by the Ministry of the Interior and the Office of the Prosecutor General of Azerbaijan, which stated that Mr. Mammadov was arrested on the basis of information about his supposed "cooperation with the intelligence agency of a foreign country", "activities against the security and territorial integrity of Azerbaijan", as well as "incitement of national, racial and religious hatred". According to the authors of the statement, Mr. Mammadov had supposedly become an agent of the foreign secret service 20 years ago.

49. On 28 November 2012, Mr. Mammadov's lawyers reported that their client was facing two sets of accusations: "illegal selling of drugs" on the one hand, and "high treason" and "incitement to national, racial, social and religious hatred and hostility" on the other hand, under articles 234.4.3, 274 and 283 of the Criminal Code of Azerbaijan, respectively.

50. The source refers to the Government's response and claims that the authorities had fabricated a story to link the first set of accusations about illegal selling of drugs with the second set about high treason and incitement to national, racial, social and religious hatred and hostility. The source further highlights that Mr. Mammadov's alleged contact in the "Iranian special service", as mentioned in the Government's response, is actually an Iranian academic, who is well known in Azerbaijan and who is reportedly being persecuted in Iran.

51. On 27 September 2013, Mr. Mammadov was sentenced to five years' imprisonment in a semi-closed trial at the Baku Grave Crimes Court for charges under articles 234.4.3, 274 and 283 of the Criminal Code. His lawyer appealed the verdict before the Baku Appeal Court.

52. The source highlights that a particularly worrisome aspect of the case is its resemblance to the precedent set by the Azerbaijani authorities in the case of Novruzali Mammadov, former editor-in-chief of Tolishi Sado newspaper, who was subjected to an almost identical ordeal and who subsequently died in custody.

53. In this respect, the source expresses its concern that the key prosecution witness in the Hilal Mammadov trial was also the key witness in the Novruzali Mammadov trial. The source is also concerned that his testimony in the Hilal Mammadov trial was largely copied from his earlier testimony in the Novruzali Mammadov trial. The source thus submits that Hilal Mammadov's harassment at the hands of the Azerbaijan authorities is essentially a re-hash of the harassment experienced by Novruzali Mammadov a few years earlier on the basis of fabricated charges and unfair proceedings, aimed at silencing another human rights defender in the country.

54. The source refers to the Government's response that Mr. Mammadov's complaints that he was manhandled and injured in the course of and during the period immediately following his arrest had been assessed and studied, and that forensic medical examinations had been carried out before his complaints were rejected. However, the source states that neither the decisions rejecting the complaints nor the Government's response address the existence of the photographic evidence taken by Mr. Mammadov's lawyer subsequent to his arrest, which show injuries on his leg. Furthermore, neither the decisions nor the response address the contention that the medical examinations were carried out long after the ill-treatment had taken place.

55. The source highlights some contradictions in the Government's response with regard to Mr. Mammadov's health, and expresses concern about the precedent created by the death in detention of Novruzali Mammadov, former editor-in-chief of Tolishi Sado, in an almost identical judicial scenario. The source reiterates its concerns about Mr. Mammadov's health, in particular in the light of the previous and repeated attempts by the authorities to deny or minimize his health issues.

56. According to the source, the Government's response fails to set out the grounds on which the decision to reject Mr. Mammadov's application for an audio-visual recording of the trial hearings were based. The source indicates that there are strong reasons to believe that the rejection as well as the decision to hold in-camera hearings on the charge of high treason were aimed at dissimulating evidence of violations of due process and fair trial standards during the hearings. In this respect, the source states that several violations of due process and fair trial standards were generally noted during the proceedings, as exemplified notably by the systematic rejection of all the requests that Mr. Mammadov filed with the courts.

57. In conclusion, the source finds the Government's response inadequate due to its failure to address the question of the arbitrary character of the charges brought against Mr. Mammadov, the ill-treatment to which he has been subjected and his health status, the

groundless rejection of his application for an audio-visual recording of the hearings, as well as the systematic rejections of his requests for public hearings.

58. The source reiterates that the sentencing and detention of Mr. Mammadov are due to his exercise of universally recognized human rights, in particular the right of freedom of expression.

59. The source submits that the detention of Mr. Mammadov is arbitrary as it constitutes a form of judicial harassment that contradicts international human rights standards and Azerbaijan's obligations. His detention is also arbitrary because it aims at sanctioning and preventing Mr. Mammadov from carrying out activities for the promotion of and respect for universally recognized human rights standards by the national authorities of Azerbaijan.

60. The source therefore maintains that Mr. Mammadov's arrest, detention, prosecution, conviction and imprisonment are aimed solely at sanctioning and preventing his activities as a human rights defender, and that the judicial proceedings were unfair. It considers that this case falls within categories II and III of the arbitrary deprivation categories defined by the Working Group in its methods of work.

Discussion

61. The Working Group was informed that Mr. Mammadov has been sentenced to five years in prison for criminal offences relating to "illegal selling of drugs", "high treason" and "incitement to national, racial, social and religious hatred and hostility" under articles 234.4.3, 274 and 283 respectively of the Criminal Code of the Republic of Azerbaijan.

62. The source alleged that the authorities fabricated the case against Mr. Mammadov due to his human rights work and support for the minority Talysh population.

63. The source informed the Working Group that Mr. Mammadov was a consultant with the Institute for Democracy and Peace and editor-in-chief of Tolishi Sado, the only newspaper in the minority Talysh language in Azerbaijan. Mr. Mammadov was also head of the Committee for the Defence of Novruzali Mammadov, a prominent Talysh scientist and human rights activist and former editor-in-chief of Tolishi Sado, who was charged in June 2008 with espionage, subsequently sentenced to 10 years of imprisonment, and who died in prison in 2009.

64. Hilal Mammadov was arrested on 21 June 2012 for alleged possession of heroin. On 3 July 2012 and 23 November 2012, he was also charged with treason and incitement of national, racial, social and religious hatred and hostility. His hearing in the Baku Grave Crimes Court began on 29 January 2013; he was convicted of the charges brought against him and sentenced on 27 September 2013.

65. In its response, the Government set out the case for the prosecution and the court's judgment. However, the Working Group is of the view that the Government did not provide a satisfactory explanation as to the allegations put forward by the source concerning the arbitrary character of the charges against Mr. Mammadov and his subsequent conviction.

66. The information provided by the source and the Government to the Working Group indicates that the charges of treason and incitement of national, racial, social and religious hatred and hostility are based on Mr. Mammadov's legitimate exercise of the right of freedom of expression under article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. As such, the Working Group considers that the deprivation of liberty of Hilal Mammadov falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

67. Furthermore, the Working Group is of the view that the response from the Government does not adequately address the source's allegations of ill-treatment to which Mr. Mammadov has been subjected in detention, its concerns for his health, nor the groundless rejection of his application for an audio-visual recording of the hearing.

68. The Working Group finds that these violations of international law relating to the right of a fair trial are of such gravity as to give the deprivation of liberty of Hilal Mammadov an arbitrary character. As such, the Working Group considers that Mr. Mammadov's detention falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

Disposition

69. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The detention of Hilal Mammadov is arbitrary, being in contravention of articles 9, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 12 and 19 of the International Covenant on Civil and Political Rights. It falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

70. Consequent upon the opinion rendered, the Working Group requests the Government of Azerbaijan to remedy the situation of Mr. Mammadov and bring it into conformity with the standards and principles set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

71. Taking into account all the circumstances of the case, the Working Group is of the view that the adequate remedy would be to immediately release Mr. Mammadov and accord him an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

[Adopted on 22 November 2013]