



**Information from the Russian Federation with reference to the joint enquiry by the Special Rapporteurs of the Human Rights Council regarding the situation of E.-U.K. Kuku**

*Reference:* AL RUS 10/2019

The Russian Federation has studied the enquiry by the Special Rapporteurs of the Human Rights Council on the situation of human rights defenders, on the promotion and protection of the right to freedom of opinion and expression and on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Working Group on Arbitrary Detention regarding the situation of Emir Usein Kuku, and wishes to submit the following.

Mr. Kuku was born in Novorossiysk, Krasnodar territory, on 26 June 1976 and is a national of the Russian Federation.

According to information received from the Ministry of Internal Affairs for the Republic of Crimea, at 4.30 p.m. on 11 February 2016, Mr. Kuku was arrested by officers from the investigation department of the Administration of the Federal Security Service of Russia for the Republic of Crimea and the city of Sevastopol, in accordance with the procedure set out in article 91 of the Code of Criminal Procedure of the Russian Federation on suspicion of an offence under article 205.5 (2) of the Criminal Code of the Russian Federation. At 11.20 p.m. the same day, on the basis of the record of arrest, he was placed in the holding facility attached to the Saky intermunicipal division of the Ministry of Internal Affairs of Russia.

Upon his placement in the holding facility, a duty officer from the special unit at the facility carried out a body search of Mr. Kuku, but no visible bodily injuries were discovered, and no complaints were received regarding Mr. Kuku's health. He was held alone in cell No. 2.

On 12 February 2016, the Kyiv District Court, in the city of Simferopol, ordered Mr. Kuku to be remanded in custody until 8 April 2016. He was transferred from the holding facility to the Court and back again by officers from the Administration of the Federal Security Service of Russia for the Republic of Crimea and the city of Sevastopol.

On 15 February 2016, at 10.20 a.m., Mr. Kuku left the holding facility on a scheduled transfer to remand centre No. 1, a federally funded institution attached to the Administration of the Federal Security Service of Russia for the Republic of Crimea and the city of Sevastopol.

According to the register of medical examinations of persons detained in holding facilities, during Mr. Kuku's time in the holding facility, no complaints were made about the state of his health, he did not seek medical care, and no bodily injuries were discovered upon his departure. He refused a daily walk (the relevant entries in the register are available). According to the register of removals from holding facility cells, on 12 February 2016, he was removed from his cell between 7.03 p.m. and 7.10 p.m. so that it could be cleaned.

On 29 July 2016, following a request by the Crimea Garrison Military Court, Mr. Kuku was transported from remand centre No. 1 to the Court by an escort team attached to a separate company of the Ministry of Internal Affairs for the Republic of Crimea for the protection and transport of suspects and accused persons so that he could participate in a hearing on the consideration of an appeal filed on his behalf by the lawyer [REDACTED] against the decision of the deputy director of military investigation department No. 532, on 30 July 2015, not to open a criminal case against an officer of the Administration of the Federal Security Service of Russia for the Republic of Crimea and the city of Sevastopol on the basis of evidence of an offence under article 286 (3) (a) of the Criminal Code.

On 3 August 2016, following a request by the Kyiv District Court, in the city of Simferopol, Mr. Kuku was transported from remand centre No. 1 to the Court by an escort team attached to the separate company so that he could participate in a hearing.

On 8 December 2016, following a request by the N.I. Balaban Republic of Crimea Psychiatric Hospital No. 1, a federally funded health-care institution of the Republic of Crimea, Mr. Kuku was transported from remand centre No. 1 to unit No. 15 of the N.I.

Balaban Republic of Crimea Psychiatric Hospital No. 1 by an escort team attached to the separate company so that he could undergo a forensic psychiatric examination.

On 9 January 2017, Mr. Kuku was transported from unit No. 15 of the N.I. Balaban Republic of Crimea Psychiatric Hospital No. 1 to remand centre No. 1 by an escort team attached to the separate company.

On 3 February 2017, following a request by the investigation department of the Administration of the Federal Security Service for the Republic of Crimea and the city of Sevastopol, Mr. Kuku was transported from remand centre No. 1 to the Supreme Court of the Republic of Crimea by an escort team attached to the separate company so that the period of remand in custody as a preventive measure could be extended.

On 29 March 2017, following a request by the Kyiv District Court, in the city of Simferopol, Mr. Kuku was transported from remand centre No. 1 to the Court by an escort team attached to the separate company so that he could participate in a hearing.

On 6 April, 5 June, 4 August and 4 October 2017, following requests by the Supreme Court of the Republic of Crimea, Mr. Kuku was transported from remand centre No. 1 to the Court by an escort team attached to the separate company so that the period of remand in custody could be extended.

On 4 December 2017, following a request by the Crimea Garrison Military Court, Mr. Kuku was transported from remand centre No. 1 to the Court by an escort team attached to the separate company so that he could participate in a hearing.

The official documentation of the escort teams attached to police units of the Ministry of Internal Affairs for the Republic of Crimea contains no information about requests by Mr. Kuku for medical care.

Subsequently, between 11 December 2017 and 12 November 2019, Mr. Kuku was transported from remand centre No. 1 of the central department of the Federal Penal Service of Russia for Rostov province to the Southern District Military Court (formerly the North Caucasus District Military Court) by an escort team attached to a separate battalion of the Department of the Ministry of Internal Affairs for Rostov-on-Don for the protection and transport of suspects and accused persons so that he could participate in court proceedings.

During this period, Mr. Kuku was transported from remand centre No. 1 of the central department of the Federal Penal Service for Rostov province to the Southern District Military Court by officers from the separate battalion a total of 59 times. However, no complaints or claims were received from the accused regarding either the conditions in which he was transported and held in a service vehicle (A3 model) and the Court's holding cells or the state of his health.

The procurator's office for the Republic of Crimea supervised the investigation in the criminal case.

According to the information provided by the procurator's office for the Republic of Crimea, during its supervision of the conduct and outcomes of the investigation in the criminal case, no complaints were received from the accused or considered in which information was provided about a possible failure by a pretrial investigation body of the Federal Security Service to provide appropriate medical care.

In addition, in accordance with articles 46, 47 and 50 of the Code of Criminal Procedure, from the moment that notification was transmitted of the initiation of criminal proceedings and Mr. Kuku was detained, the investigation ensured his right to be assisted by a lawyer, who took part, without fail, in the conduct of the investigation and steps in the proceedings.

The appeals filed by Mr. Kuku and his lawyer contain no information about a failure to provide medical care to him. The arguments made in the appeals will be checked by a higher court when the criminal case is heard on appeal.

By order of the Southern District Military Court of 12 November 2019, Mr. Kuku was sentenced under article 205.5 (2) of the Criminal Code (in the version set out in Federal Act No. 302-FZ of 2 November 2013) for participating in the activities of an organization

declared under the legislation of the Russian Federation to be a terrorist organization and under article 30 (1) and 378 of the Criminal Code for preparing to commit acts aimed at violently seizing power and violently overthrowing the constitutional order of the Russian Federation, to 12 years' deprivation of liberty, with restriction of liberty for 1 year, in a strict regime correctional colony.

Mr. Kuku was found guilty of the charges against him on the basis of the evidence gathered, which was duly assessed by the Court in accordance with articles 17, 87 and 88 of the Code of Criminal Procedure.

In setting the penalty, the Court considered the nature and danger to society of the crimes committed, the character of the defendant, mitigating circumstances ( [REDACTED] [REDACTED], no previous criminal convictions and positive characteristics) and aggravating circumstances (an active role in the commission of crimes and participation in a criminal association).

The penalty was set in accordance with the established provisions of the Criminal Code. However, it should be noted that the term imposed is slightly higher than the minimum possible penalty for this combination of crimes, and the type of correctional institution was determined with due regard to their severity. The claims made in this regard are unfounded.

The sentence has yet to become enforceable, as it is the subject of an appeal by the defendant and his lawyers.

The criminal case was investigated by the investigation department of the Administration of Federal Security Service of Russia for the Republic of Crimea and the city of Sevastopol.

On 11 August 2018, the Ukrainian authorities lodged inter-State application No. 38334/18 (*Ukraine v. Russia* (VII)) with the European Court of Human Rights. The European Court officially notified the Russian Federation of the application by letter of 27 August 2018.

In the application, the authorities of Ukraine allege that the arrest, remand in custody and criminal prosecution in the Russian Federation of several dozen Ukrainian citizens hostile to the Russian Federation on charges of participation in banned organizations, extremism, terrorism, espionage and the commission of military offences are evidence of an "administrative practice" of violations of articles 3, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 18 of the Convention for the Protection of Human Rights and Fundamental Freedoms (torture, ill-treatment, unlawful deprivation of liberty, unfair trial, unlawful criminal prosecution, violation of the rights to respect for private and family life, to freedom of thought, conscience and religion, to freedom of expression and to freedom of assembly and association, discrimination and lack of effective legal protection).

Mr. Kuku, born in 1976, is one of the citizens alleged in the inter-State application to be a victim. With specific reference to Mr. Kuku, it is claimed that appropriate medical care has not been provided in the penal system. However, the consideration of the relevant criminal case had not been completed by the time that the inter-State application was lodged with the European Court (the sentence was handed down by the Southern District Military Court on 12 November 2019), and the authorities of Ukraine have made no specific claims in this regard.

As at 11 March 2020, no information had been received from the European Court regarding the composition of judges, the timetable or how the proceedings relating to the inter-State complaint would be conducted.

Nevertheless, as part of these proceedings, the European Court considered a request by the authorities of Ukraine for interim measures (rule 39 of the Rules of Court) in connection with the provision of appropriate medical care to Mr. Kuku (and other persons) in institutions of the penal system.

On 5 September 2018, 31 December 2019 and 21 January 2020, following requests by the European Court, the authorities of the Russian Federation provided factual information about Mr. Kuku's health and the medical care provided to him (and other persons) and stated their position that the request of the authorities of Ukraine was unsubstantiated.

By letter of 5 February 2020, the European Court informed the authorities of the Russian Federation that the decision had been taken not to indicate that interim measures should be adopted in respect of Mr. Kuku.

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