

(Translated from Russian)

Office of the United Nations High Commissioner
for Human Rights

Geneva

The Permanent Mission of the Russian Federation to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to transmit the following information from the Russian Federation in relation to joint request AL RUS 4/2020 of 29 July 2020 from the special procedures of the Human Rights Council.

The Permanent Mission avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

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Information from the Russian Federation in relation to the joint request from the special procedures of the Human Rights Council concerning Mr. S.R. Mustafayev and Mr. E.-U.K. Kuku

Reference: AL RUS 4/2020

The Russian Federation has studied the joint request from the special procedures of the Human Rights Council concerning Mr. S.R. Mustafayev and Mr. E.-U.K. Kuku, and has the honour to provide the following information.

The Russian Federation does not recognize or consider itself bound by the provisions of the politicized General Assembly resolutions 68/262, 71/205, 72/190, 73/263 and 74/168.

Pursuant to the Constitution of the Russian Federation, the Republic of Crimea and the city state of Sevastopol are fully fledged constituent entities of the Russian Federation, having become part of it in accordance with the free expression of the will of the inhabitants of the Crimean peninsula. The entire territory of the Russian Federation, including the Republic of Crimea and the city state of Sevastopol, is subject to the laws of the Russian Federation and our country's international human rights obligations, in respect of which the Russian Federation reaffirms its continued commitment.

In response to the joint request from the special procedures of the United Nations Human Rights Council – the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Working Group on Arbitrary Detention – with regard to the situation concerning Russian citizens Mr. S.R. Mustafayev and Mr. E.-U.K. Kuku, detained in the Republic of Crimea, we consider it necessary to provide the following information.

1. The investigating agency of the department of the Federal Security Service of the Russian Federation in the Republic of Crimea and the city of Sevastopol conducted a preliminary investigation into criminal case No. 11707350001427055, opened on 9 October 2017 against the following citizens of the Russian Federation: [REDACTED], under article 2055 (1) of the Criminal Code of the Russian Federation; and [REDACTED], [REDACTED], [REDACTED] and [REDACTED], under article 2055 (2) of the Criminal Code of the Russian Federation.

The case was based on materials indicating that, as a member of the Islamic Liberation Party (Hizb ut-Tahrir al-Islami), which the Supreme Court of the Russian Federation, in a decision adopted on 14 February 2003, recognized as a terrorist organization, banning its activities in the country, [REDACTED] organized on or before 18 November 2016 and headed a local cell of the organization in the town of [REDACTED] which included [REDACTED], [REDACTED], [REDACTED], [REDACTED] and other persons.

In the course of the investigation, information was received that one of the members of the cell was Mr. S.R. Mustafayev, in respect of whom the investigating agency had on 21 May 2018 opened criminal case No. 11807350001000042 under article 2055 (2) of the Criminal Code of the Russian Federation. On the same day, the suspect was detained under article 91 (1) (2) of the Code of Criminal Procedure and, on 22 May 2018, the court, supported by the procurator, selected remand in custody as a preventive measure.

The justification for bringing the criminal case against Mr. Mustafayev was verified by the Office of the Procurator of the Republic of Crimea. No grounds were found for overturning the decision.

Pursuant to a decision of the head of the investigating agency taken on 21 May 2018, the case was combined with the above-mentioned case No. 11707350001427055.

In the course of the investigation, elements of a crime, as provided for in articles 30 (1) and 278 of the Criminal Code of the Russian Federation, were found in the actions of the organizers and participants of the terrorist cell. These were: the finding of accomplices, conspiracy to commit an offence and the creation of conditions for the violent seizure and retention of power and violent change of the constitutional order of the Russian Federation for the purpose of establishing a unitary theocratic state, the “World Islamic Caliphate”, in the Crimean peninsula.

In these circumstances, on 20 February 2019, the investigating agency of the Russian Federal Security Service in the Republic of Crimea and the city of Sevastopol opened criminal case No. 11907350001000024, which was subsequently combined with case No. 11707350001427055. In the final drafting, Mr. Mustafayev was charged with having committed crimes under articles 2055 (2), 30 (1) and 278 of the Criminal Code of the Russian Federation. According to the procurator’s office, the law enforcement agencies did not commit any violations of the legislation on police investigative activities or criminal procedural law in connection with the criminal prosecution of the individual concerned.

On 6 August 2019, the criminal case against Mr. Mustafayev and others was sent with an approved indictment to the North Caucasus (Southern) District Military Court. In its decision, the Court noted that it had taken into account information on the detainee such as family status, presence of minor children and positive characteristics, but had proceeded from the assumption that the detainee, as a suspect in the commission of a particularly serious crime, might hide from the investigating authorities or the Court, continue his criminal activity or obstruct the criminal proceedings. No submission had been made that Mr. Mustafayev suffered from any illness that would prevent him from being held in the remand centre.

The period of application of the chosen preventive measure has been extended by the Court several times, as the grounds for it remain valid. The defence appealed against those decisions, but they were upheld by the court of appeal. The period of detention was most recently extended until 12 November 2020.

Within the framework of the proceedings against Mr. Mustafayev, more than 70 sittings have been held with a frequency of between one and four times a week (with extended breaks due to the coronavirus disease (COVID-19) pandemic). The interests of the defendant have been represented by counsel (by agreement and by appointment). Furthermore, when it was not possible for any of the persons concerned to be present in the courtroom (together with another defendant), the Court ensured that they were able to take part by videoconference from the Crimean Garrison Military Court.

During the trial, Mr. Mustafayev and his lawyers repeatedly requested that sittings should be held no more frequently than once a week, supposedly because it was not possible for them to prepare properly. In response, the court decided to grant additional time for the defence to consult. The accused and his representatives were informed of the requirements of article 61 of the Code of Criminal Procedure concerning the inadmissibility of extending the proceedings, including the need for a more responsible attitude on the part of the lawyers in the performance of their duties, taking into account the lengthy detention of the defendants. The Court also provided the possibility for them to consult by allowing for short (10–15 minute) breaks during sittings. Nevertheless, during the judicial examination, Mr. Mustafayev, abusing his right to defence and clearly delaying the consideration of the case on the merits, challenged both the chair of the case and the entire bench at least 50 times on various far-fetched (and often similar) grounds.

Thus, in the course of the hearing on 10 August 2020, after repeated warnings about disturbances of the proceedings and the exclusion of discourteous statements made about the Court, the justice system and the State structure of the Russian Federation in general, Mr. Mustafayev was removed from the courtroom before the end of the hearing, in accordance with article 258 (3) of the Code of Criminal Procedure. From 3 September 2020, the defence exercised its right to speak during the oral presentations by the parties. The Chief Military Procurator’s Office and the Military Procurator’s Office of the Southern Military District have not received any complaints from the defendant or his lawyers concerning court actions related to violations of the defendant’s rights during the hearings.

From 23 May 2018, Mr. Mustafayev was held on the basis of court decisions in remand unit No. 1, a federal penal institution under the Department of the Federal Penal Service of the Russian Federation for the Republic of Crimea and the city of Sevastopol. Pursuant to a decision of 12 September 2019 of the North Caucasus District Military Court, he was taken in transit through remand units No. 1 and No. 2 of the Federal Penal Service of the Russian Federation in Krasnodar Territory to remand unit No. 1 of the Federal Penal Service of the Russian Federation in Rostov Province.

On admission to the remand units, Mr. Mustafayev was examined by medical personnel, not having made any complaint about his health. He was not found to have any illness that would prevent him from being detained. The cells of the remand centres where the accused was held met the requirements of the current legislation in respect of living conditions. He was provided with individual sleeping accommodation, bedding and eating utensils, personal hygiene products and three hot meals a day, in line with the standards set by the Government of the Russian Federation. No information has been received about any restrictions on his right to freedom of religion.

During his detention, Mr. Mustafayev was allowed to exercise for at least one hour every day. In remand unit No. 1 in Rostov Province, he had at least six meetings with lawyers, received 15 hand-delivered packages and 15 parcels, which were issued to him in accordance with the established procedure – against signature and in full. He did not submit any allegations of violations of his rights to the administration of that establishment.

However, during the period he was held in the above-mentioned remand units, the standard of 4 square metres per person, provided for in article 23 of Federal Act No. 103-FZ of 15 July 1995 on the detention of suspects and persons accused of committing crimes, was not maintained in his respect. In this connection, the procurator's offices of the Republic of Crimea and Krasnodar Territory made representations to the heads of the regional penal enforcement agencies in those constituent entities of the Russian Federation, following which measures were taken to address the violations and disciplinary measures were taken against the persons responsible.

In addition, when he was in remand unit No. 1 of the Federal Penal Service in Rostov Province, Mr. Mustafayev requested and was promptly provided with medical assistance in connection with acute respiratory disease. His health is currently satisfactory, there is no need for hospitalization, and there are no signs of coronavirus infection. An additional check was conducted with the participation of specialists from the regional body of the Federal Service for the Supervision of Health Care for the Rostov Region.

On 16 September 2020, the Southern District Military Court pronounced its verdict, finding Mr. Mustafayev guilty of committing crimes under articles 2055 (2), 30 (1) and 278 of the Criminal Code of the Russian Federation, and sentenced him to 14 years' imprisonment, to be served in a strict regime penal colony. As at 23 September 2020, the verdict had not entered into legal force and can be appealed by the parties to the Military Court of Appeal.

2. The information on the legal grounds for the arrest, detention and subsequent conviction of Mr. E.-U.K. Kuku was sent to the Office of the United Nations High Commissioner for Human Rights under Note verbale No. 1158 of 20 March 2020 from the Permanent Mission of the Russian Federation to the United Nations Office and other International Organizations in Geneva in response to the previous joint request from the special procedures of the Human Rights Council concerning the case of that individual (*reference: AL/RUS/10/2019*).

3. At all stages of the investigative and judicial proceedings against both Mr. Mustafayev and Mr. Kuku, comprehensive preventive measures were taken against the COVID-19 pandemic.

During the consideration of these cases, in order to prevent the spread of COVID-19 infection, the Southern District Military Court took the following measures during its sittings in accordance with the recommendations of the Federal Service for the Supervision of Health Care: judges, court staff, other participants and visitors had their body temperature checked at the entrance to the court building, protective masks were worn

during the hearings, the premises were disinfected by means of ventilation and the use of bactericidal irradiators, and the number of participants was adjusted to the size of the room.

Since February 2020, the case has been heard only if there are medical documents confirming that there are no obstacles to the defendants participating in the sittings. No hearings were held in Mr. Mustafayev's case between 19 March 2020 and 12 May 2020, but the question of the preventive measure was considered on 13 April 2020. From May 2020, no court hearings were scheduled in this case on Fridays, due to the implementation of quarantine measures in the remand unit. As regards the complaints made by Mr. Mustafayev about his state of health, on 4 March 2020, the court hearing was suspended to provide him with emergency medical care. As a result of the examination, he was diagnosed with acute respiratory viral infection, which was not an obstacle to his further participation in the proceedings.

The duration of the consideration of the case against Mr. Mustafayev was also due to the size of the case files (45 volumes), the number of participants in the trial (31 people), the need to engage an interpreter and the attendance of witnesses and defence lawyers from outside the town. In addition, the defence committed numerous violations of court rules, abusing its procedural rights to disrupt the presentation of evidence by the prosecution and, ultimately, to prolong the trial as a whole.

The defendant had the opportunity to consult with his defence lawyers in the remand centre (except for the period between 28 April and 26 June 2020, when detainees were not allowed visits because of the quarantine measures), as well as before court hearings, during breaks and at the end of court hearings.

According to paragraph 1.5 of Decision No. 9 of the Chief State Medical Officer of the Russian Federation of 30 March 2020 on supplementary measures to prevent the spread of COVID-19, public health and disease control regulations 3.1.3597-20 on prevention of COVID-19 infection and the interim guidelines on the prevention, diagnosis and treatment of COVID-19 infection developed by the Ministry of Health of the Russian Federation, there were no indications for testing for COVID-19 infection in the case of Mr. Mustafayev.

Medical care was provided to Mr. Mustafayev in accordance with the requirements of Russian legislation in the area of health protection and the provisions of the Order No. 285 of the Ministry of Justice of 28 December 2017 on the organization of medical care for persons remanded in custody or serving a prison sentence.

If medical indications arise, measures will be taken to provide Mr. Mustafayev with specialized care, including advanced medical care in the State or the municipal health-care system.

In order to prevent the emergence and spread of COVID-19 infection among persons held in penal establishments and employees of penal correction establishments or bodies, a number of organizational public health and disease control measures have been taken.

The Federal Penal Service issued Order No. 196 of 19 March 2020 on urgent measures to prevent the spread of COVID-19 infection, an operational headquarters was set up and a plan of urgent measures to prevent the spread of COVID-19 infection was approved and implemented. A 24-hour hotline was set up to monitor information on the epidemiological situation in penal establishments.

The Chief State Medical Officer of the Federal Penal Service has taken 290 decisions introducing additional public health and disease control measures to prevent the occurrence and spread of COVID-19 infection.

Restrictive measures (quarantine) have been introduced by decisions of the Chief State Medical Officer and the Chief State Medical Officers of the medical and public health units in the establishments of 53 territorial bodies of the Federal Penal Service.

On 7 April 2020, the Federal Penal Service adopted a comprehensive plan of organizational, practical, public health, preventive, therapeutic and diagnostic measures to address the threat of the occurrence and spread of COVID-19 infection in institutions and bodies of the penal correction system. It provides for comprehensive preventive and curative measures according to the level of epidemiological danger.

Establishments under the Service's authority have been instructed to take the necessary measures to organize the provision of medical care for suspects, accused and convicted persons who may have COVID-19 infection, including the deployment of beds for inpatient treatment, with the availability of oxygen, outpatient care, isolation conditions and monitoring.

In order to respond promptly to changes in the epidemiological situation in the medical organizations of the Federal Penal Service, an operational reserve of medical personnel has been formed, consisting of anaesthesists, resuscitation specialists, general practitioners, infectious disease specialists and nurses. The medical organizations of the penal correction system are supplied with the necessary drugs for the controlled treatment of COVID-19 patients.

Pursuant to article 48 of Federal Act No. 103-FZ of 15 July 1995 on the detention of suspects and persons accused of committing crimes, a regime of special conditions was gradually introduced in remand units in regions with the most difficult epidemiological situation in order to prevent the occurrence and spread of coronavirus infection among suspects, accused and convicted persons and employees of institutions and bodies of the penal correction system. In addition, staff have been placed on an emergency footing, with accommodation and meals provided within the establishments. In order to properly carry out the functions assigned to the Federal Penal Service, each regional authority, when introducing quarantine measures, has identified one remand centre for the reception of incoming prisoners.

While the special conditions regime was in force, no visitors could enter, for either short or long visits, trips outside the institutions were not possible and the reception of parcels, printed matter and hand-delivered packages was suspended. A special procedure was introduced for admittance to the Federal Penal Service establishments, judicial and investigative actions and meetings with lawyers (in rooms with glass partitions, with the use of personal protective equipment and subsequent cleaning of the premises with disinfectant solution and air disinfection with bactericidal irradiators/recyclers).

Medical "filters" have been put in place at all penal correction facilities, with daily medical checks of facility workers and body temperature measurements; plans have been developed and coordinated with the health authorities of the constituent entities of the Russian Federation to route suspects and accused or convicted persons suspected of having COVID-19 infection to medical facilities in the penal correction system, and to organize State and municipal health-care systems; a procedure has been drawn up for the laboratory examination of employees and persons held in penal institutions if they have suspected COVID-19 infection; a plan has been developed for the phased deployment of additional bed capacity in medical facilities in the establishments of the penal correction system for the reception of persons suspected of having COVID-19 infection, with the possibility of increasing the number of beds if the epidemiological situation worsens; emergency supplies of drugs, disinfectant, thermometers, personal protective equipment (masks, gloves and shoe covers) have been put in place; medical equipment (artificial ventilators, oxygen concentrators, pulse oximeters, etc.) has been prepared; medical personnel have been trained in the prevention of COVID-19 infection, including through the use of distance learning; and observation facilities have been set up within penal establishments for individuals who have been in contact with persons infected with COVID-19.

Centres have been organized in medical units of penal establishments for patients with COVID-19 infection, where staff wear personal protective equipment (type I and type II protective suits) and undergo disinfection treatment before and after visiting the centres; penal establishments have not been admitting suspects, accused or convicted persons brought from temporary detention facilities who either have COVID-19 infection or are suffering from symptoms that do not rule it out, or individuals who have been in contact with such persons; monitoring of the work and level of sanitation in the accommodation, dining facilities, boiler rooms, water supply sources, locker rooms and staff dining facilities has been stepped up; vehicles entering the facility are treated with disinfectant solution; corridors and checkpoint passages are provided with disinfectant carpets and disinfectant mats.

In line with Decision No. 185 of the Chief State Medical Officer of the Federal Penal Service, of 15 April 2020, on additional health and preventive measures to prevent the occurrence and spread of COVID-19 infection, the period of quarantine for new arrivals has been increased from 14 to 20 days.

To ensure optimum provision of personal protective equipment in accordance with Government Order No. 1200-r of 30 April 2020, on the allocation in 2020 by the Federal Penal Service of budgetary appropriations from the reserve fund of the Russian Federation to its regional agencies, budget obligation limits have been set for the purchase of personal protective equipment – masks, gloves, respirators, protective goggles and screens, shoe covers, medical gowns and protective suits – based on predicted needs according to the guidelines of the Federal Service for Supervision of Health Care and Decision No. 582 of 18 May 2020 of the Chief State Medical Officer of the Penal Service. In addition, the regional agencies of the Penal Service have purchased personal protective equipment from current funding.

Information from regional agencies of the Federal Penal Service indicates that they have between two and six months' stock of individual protective equipment (masks, gloves, shoe covers, protective suits and head covers).

Where violations of the preventive regime are found to have occurred, including in the use of personal protective equipment, the Chief State Medical Officers issue rulings on administrative offences, with penalties including administrative fines.

The urgent measures undertaken to prevent COVID-19 infection have made it possible to avoid massive occurrence of the infection in penal institutions; to prevent a sharp increase in morbidity among workers of the penal correction system; to ensure the rapid deployment of beds for inpatient treatment of COVID-19 patients and create conditions for the isolation and the outpatient treatment of patients; to roll out diagnostic capacity for COVID-19 infection in existing immunology laboratories, expanding the list of suspects, accused and convicted persons and staff of the penal correction system who can be tested.

Research to refine the detection of COVID-19 infection has been conducted since 2 April 2020 in 49 laboratories in medical organizations in the penal correction system.

The measures taken to prevent the spread of COVID-19 infections in penal institutions are helping to curb the increase in the number of suspects, accused and convicted persons infected. Twenty-four-hour monitoring of the epidemiological situation in the regional agencies of the Federal Penal System will continue.

Taking into account the probability of a second wave of COVID-19 infection and the rise in the incidence of influenza and acute respiratory diseases in the 2020–2021 season, plans have been developed for major preventive measures, including influenza immunization to cover at least 50 to 60 per cent of suspects, accused and convicted persons and staff of the penal correction system, as well as at least 75 per cent of persons belonging to risk groups.

We would add furthermore that no cases of COVID-19 infection were reported during the pandemic among those held in remand unit 1.

4. The meals provided in institutions of the penal correction system meet the standards approved under Government Decision No. 205 of 11 April 2005 on minimum standards for food and living conditions for persons sentenced to deprivation of liberty, for suspects and accused persons held in remand centres of the Federal Penal Service, in temporary detention facilities of the internal affairs agencies of the Russian Federation and in the facilities of the Federal Security Service Border Control Agency, persons held in administrative detention and persons detained in the regional bodies of the Ministry of Internal Affairs in time of peace; and under Ministry of Justice Order No. 189 of 17 September 2018 on improved standards for food, rations and norms for the replacement of one item by another, used in supplying meals for convicted prisoners and persons suspected or accused of crimes held in establishments of the Federal Penal Service in time of peace.

The provision of foodstuffs and the quality of cooked meals are monitored in line with the procedure for the provision of foodstuffs for convicted prisoners, suspects and accused persons held in penal institutions, approved under Federal Penal Service Order No. 696 of 2 September 2016. All food items are accompanied by documentation certifying the quality of production. The expiration dates of food items are respected. The daily standard amounts are provided in full to the persons catered for. In exceptional cases, and with the permission of the head of the establishment, food items may be replaced in line with the rules set out in annex 7 to Order No. 189.

A wide range of food items is made available to persons held in remand centres. In addition to pork, the menu includes dishes containing chicken, fish, cereals and vegetables.

The above-mentioned standards were developed by the Federal State Research Centre for Nutrition, Biotechnology and Food Safety (previously known as the State Nutrition Research Institute of the Russian Academy of Medical Sciences) taking World Health Organization recommendations into account. They make full provision for energy requirements and proportions of proteins, fats and carbohydrates, and are adjusted according to sex and age.

5. According to its Constitution, the Russian Federation is a secular State. No religion may be established as the State or mandatory religion. All religious associations are separate from the State and equal before the law. Furthermore, pursuant to article 16 (3) of Federal Act No. 125-FZ of 26 September 1997 on freedom of conscience and religious associations, religious rites, ceremonies and personal meetings may take place in penal institutions in compliance with the requirements of current penal enforcement legislation. Exercise of the right to freedom of conscience and religion is voluntary, and may not violate the internal regulations of the penal institution or infringe the rights of others.

Given the voluntary nature of religious belief and the fact that religious literature is not included as a category in the regulations governing the provision of foodstuffs in the penal correction system, it is not possible to provide food on religious grounds. However, suspects and accused persons have the right to order any foods and other goods that they require which are provided for in the remand centre regulations, to purchase them through the penal establishment commissary.

Detention is imposed for the purposes provided for in the Code of Criminal Procedure. Religious rites and ceremonies may be held on the premises of detention facilities in compliance with the provision of the criminal procedure legislation of the Russian Federation.

6. Cells are equipped with furniture in line with the internal regulations of remand centres of the Penal Enforcement System, approved under Ministry of Justice Order No. 189 of 14 October 2005. Suspects and accused persons are given access to sanitation facilities at least once a week, including a shower of at least 15 minutes. The cells have hot and cold water. Bed linen is changed once a week, after the shower.

The regulations governing standard clothing and bed linen allowances for convicted persons and persons held in remand centres are set out in Ministry of Justice Order No. 216 of 3 December 2013.
