

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

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

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16)
KGZ 4/2011

18 August 2011

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 17/2, 16/4, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning violent attacks against Ms. **Tatyana Tomina**. Ms. Tomina is a lawyer who has represented Uzbek nationals in the Kyrgyz Republic.

According to the information received:

On 3 August 2011, Ms. Tomina was subjected to abuse when she joined an Uzbek client at the Osh City Police Department. At the Police Department, relatives of the victim allegedly made death threats against Ms. Tomina. However, the investigator who witnessed the incident reportedly said that the incident was not the police's problem.

On 2 August 2011, four women physically attacked Ms. Tatyana Tomina at Osh City Court, where she was representing an Uzbek national on a charge concerning the ethnic violence of June 2010. Ms. Tomina was allegedly leaving the court when the four women approached her and began to hit her. It is reported that one woman hit Ms. Tomina with a heavy bag while the others kicked and punched her. The women also allegedly snatched Ms. Tomina's briefcase from her hands.

It is reported that a judge and court officials saw the incident but did not intervene. One of Ms. Tomina's colleagues tried to come to her aid but was

unable to overcome the attackers. Eventually, one of the convoy police allegedly told the assailants to leave the building. It is reported that on their way out they threw stones in the direction of Ms. Tomina.

Reportedly, later that day, the same group of women verbally attacked Ms. Tomina at a pre-trial detention facility in Osh, where she was attending a hearing of another Uzbek client charged with a crime unrelated to the June 2010 violence.

On 10 May 2011, at the appeal hearing in the Supreme Court in Bishkek, relatives of two Kyrgyz traffic police officers killed in the June 2010 violence, verbally abused Ms. Tomina and insulted her family. The individuals allegedly also accused her of being bought by Uzbeks so that they could avoid justice.

On 13 October 2010, the aforementioned police officer relatives reportedly attacked Ms. Tomina and another lawyer, as well as one of the defendants and his relatives in front of the Osh Military Unit, where the trial was due to take place. According to information received the attackers punched and kicked Ms. Tomina and her colleague and broke another person's ribs. Despite Ms. Tomina lodging a complaint with the Osh City Prosecutor's Office, no investigation followed and to date no one has been held responsible for this attack.

On 2 September 2010, at the trial hearing concerning the violence which took place in June 2010, Ms. Tomina was reportedly hit by a piece of glass which was thrown at the defendants by relatives of the victims.

Concern is expressed regarding the physical and psychological integrity of Ms. Tatyana Tomina, given that she has been subjected to a series of violent attacks. Further concern is expressed that these attacks against Ms. Tomina are directly related to the legitimate exercise of her profession as a lawyer and her work in defence of human rights of Uzbek nationals in the Kyrgyz Republic. Concern is also raised on the limited steps taken by the authorities to ensure her security, as well as to investigate the alleged attacks.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's attention to the right to physical and mental integrity of Ms. Tatyana Tomina.

In this context, we would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990. In particular, principle 18 underlines that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. Principles 16 and 17 further provide that:

- Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (Principle 16); and

- Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities (Principle 17).

With regard to the allegation on the lack of investigation into the attacks on Ms. Tomina, we would like to call upon your Excellency's Government to ensure respect of the right to effective remedy stipulated in Article 8 of the Universal Declaration of Human Rights, as well as of the Guidelines on the Role of Prosecutors, 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, guideline 12 requires that prosecutors perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

In this connection, 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 Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to 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, through these and other appropriate means, to draw public attention to those matters;

- article 9, para. 3, point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms; and

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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. 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, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. Tatyana Tomina are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Ms. Tatyana Tomina in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Ms. Tatyana Tomina?
3. Please provide full details regarding any protective measures which have been taken to ensure the physical and psychological well-being of Ms. Tatyana Tomina and other defense lawyers who have been subjected to violent attacks as a result of their work defending Uzbek clients.

4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

5. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

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

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders