

Mandates of 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: AL
RUS 3/2015:

24 July 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning charges brought against human rights defender Mr. **Konstantin Golava** following his arrest, interrogation, the search of his home and his inclusion on the 'list of active extremists'.

Mr. Konstantin Golava is secretary of the public council of **Samara Social LGBT movement Avers**, which supports the LGBTI community in the Samara region of the Russian Federation through legal and psychological consultation. He is also the founder of the public human rights movement **Alternative to conscription**, which provides advice and support on issues connected to military and alternative civilian service.

According to the information received:

On 13 May 2015, investigators from the Centre for Combating Extremism in Tolyatti searched Mr. Konstantin Golava's apartment and confiscated technical equipment, including the laptops of Mr. Golava and his family. A court order for the search was presented to Mr. Golava at the time based on a criminal case against him. Mr. Golava is facing charges of 'Incitement of National, Racial, or Religious Enmity' (Article 282 of Russia's Criminal Code) in connection with statements he published on the Russian social network website 'Vkontakte' in 2014 with regard to the role of the Russian authorities in the events in Ukraine. Following the search, Mr. Golava was arrested and detained for questioning on charges of extremism. He was released later that same day, but is facing charges that may result in the imprisonment of up to 2 years.

On 14 May 2015, the Federal Financial Monitoring Service of the Russian Federation reportedly added Mr. Golava's name to the 'list of active extremists' and his bank accounts were consequently frozen. His inclusion on this list also excludes him from applying for employment.

On 19 July 2015, Mr. Golava underwent psychological and psychiatric examinations. The period of pre-trial investigation in Mr. Golava's case was due to continue until 23 July 2015.

Concern is expressed at the arrest, interrogation and search of the home of Mr. Konstantin Golava which may be linked to his legitimate human rights activities, We are also concerned that the criminal charges brought against Mr. Golava in connection with statements he made on a social network site and criticism of the Russian authorities may also be connected to his legitimate right to freedom of opinion and expression, as enshrined in article 19 of the International Covenant on Civil and Political Rights (ICCPR). Further concern is expressed at the freezing of Mr. Golava's bank account as well as his inclusion on the 'list of active extremists'.

We are particularly concerned that the arrest, detention and charges against Mr. Golava not only aims at silencing him, but will also have a chilling effect on the right of others to seek, receive and access information, and will also have a deterrent effect on the exercise of the right to freedom of opinion and expression, as many in the Russian Federation will fear criminalization and severe consequences for freely expressing their opinions, in particular for criticizing the Government or its policies.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 details of the legal grounds for the arrest and interrogation of and charges against Mr. Konstantin Golava and for his inclusion on the list of active extremists. Please provide information on how these measures are compatible with international norms and standards, in particular article 19 of the ICCPR.

3. Please kindly indicate what measures have been taken to ensure that human rights defenders in the Russian Federation are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment or prosecution 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.

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

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:

We would like to refer your Excellency's Government to the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights and Article 19 of the ICCPR, which), which the Russian Federation ratified on 16 October 1973 and which provides that "[e]veryone 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."

We would also like to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that article 19, paragraph 3 of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We further refer to the Human Rights Committee General Comment No. 34 (2011), on the right to freedom of opinion and expression. Accordingly, "All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion." The General Comment further establishes that "the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."

In addition, 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which 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, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;

- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;

- article 7, which provides for the right to develop and discuss new human rights ideas and principles and to advocate their acceptance;

- article 12, paragraphs 2 and 3, which 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.

We would also like to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights (OP 10).