

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL RUS 8/2017

17 October 2017

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur in the field of cultural rights; 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 and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 28/9, 34/18, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and conviction of Mr. **Oleg Sentsov**.

Mr. Oleg Sentsov is a Ukrainian film director and political activist. He has been an outspoken critic of the Russian annexation of Crimea. He is the winner of the 2017 PEN/Barbey Freedom to Write Award. In 2014, Mr. Sentsov stated in an interview that he did not recognize the Russian annexation of Crimea.

According to the information received:

On 11 May 2014, the Federal Security Service of Russia detained Mr. Sentsov in Crimea, while he was helping to deliver food to Ukrainian soldiers who were blockaded inside their bases by Russian troops. It has been alleged that the arrest was linked to Mr. Sentsov's political activities.

On 25 August 2015, he was sentenced to 20 years imprisonment in a Russian prison on charges of terrorism. During the trial, Mr. Sentsov said that he was tortured in an attempt to extract a confession. He was found guilty of creating a terrorist group, carrying out two terrorist acts, and plotting the explosion of a statue of Lenin in Simferopol in Crimea. He was equally accused of founding a Crimean branch of a banned Ukrainian nationalist group called Right Sector which both Mr. Sentsov and the group itself refuted. It has been alleged that the trial and conviction of Mr. Sentsov based on the above-charges did not meet the standards of due process and fair trial. The key eyewitness against Mr. Sentsov reportedly retracted his original testimony saying that it was coerced through torture.

In November 2015 and June 2016, Mr. Sentsov's appeals against his verdict were rejected by the Russian Supreme Court.

In October 2016, Russian authorities denied a request for Sentsov's extradition to Ukraine on the grounds that he had become a Russian citizen upon Russia's annexation of Crimea.

On 9 September 2017, Mr. Sentsov was transferred from Irkutsk to Chelyabinsk.

We express grave concern at the arrest and conviction of Mr. Sentsov which appear to represent a criminalization of his exercise of the right to freedom of expression through the use of counter-terrorism legislation and following legal procedures that appear to violate the standards of due process and fair trial. We express equal concern at the allegations of torture and at the physical and psychological integrity of Mr. Sentsov while in prison. We also express concern at the denial of extradition of Mr. Sentsov to Ukraine on the grounds that he has ceased to be a Ukrainian citizen. We reiterate our concerns at the targeting of human rights defenders, artists and political activists for their peaceful human rights activities.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** 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 therefore 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 information concerning the legal grounds for the arrest and conviction of Mr. Oleg Sentsov. In particular, please provide information about the evidence used to charge and convict Mr. Sentsov on the basis of counter-terrorism legislation.
3. Please provide information on the investigation conducted, if any, into the allegation that Mr. Sentsov was subjected to torture during the investigations phase, and its outcome. If no investigation has taken place, please explain why

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 responsible of 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.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

With reference to General Assembly resolutions 68/262 (27 March 2014) and 71/205 (19 December 2016), we wish to inform you that a copy this letter will also be sent to the authorities of Ukraine for their information.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Karima Bennoune
Special Rapporteur in the field of cultural rights

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to recall that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is codified in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which was ratified by Russia on 3 March 1987, in article 7 of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Russia on 16 October 1973, and in article 3 of the European Convention on Human Rights, ratified by Russia on 5 May 1998.

We would also like to recall that everyone has the right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the ICCPR.

We moreover refer to articles 19 of the ICCPR that guarantee the rights to freedom of opinion and expression.

In connection with the use of national security legislation, we highlight that article 19(3) of the ICCPR sets out the requirements that any restrictions to the right to freedom of expression must be necessary, proportionate and prescribed by law that in itself is compatible with international human rights. While national security is a legitimate basis for restricting the right to freedom of expression under article 19(3), it is not enough to simply claim it as a justification to pursue illegitimate purposes such as silencing critical voices. The state has to demonstrate that it is necessary to do so to achieve a legitimate objective. We reiterate the statement by the Human Rights Committee in General Comment 34 that article 19(3) may never be invoked as a justification for the muzzling of any advocacy of human rights (CCPR/C/G/34).

We would also like to refer to Human Rights Council resolution 24/5 (operative paragraph 2), in which the Council “reminds States of their obligation to respect and fully protect the right of all individuals to... associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders... seeking to exercise or to promote this right, and to take all necessary measures to ensure that any restrictions on the free exercise of the right to freedom of association are in accordance with their obligations under international human rights law.”

We would also like to refer to the UN Declaration on Human Rights Defenders, particularly to article 1, 2, 6 and 12 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, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Legitimate exercise of these rights by human rights defenders should not be criminalized.