

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 35/6, 33/9 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 inappropriate conditions of detention, denial of reasonable accommodation and lack of access to adequate healthcare of Mr. [REDACTED], a person with disabilities detained at the correctional colony No. 6 in Orenburg Region, which may amount to cruel, inhumane and degrading treatment.

According to the information received:

Mr. [REDACTED], born in 1954, is a wheelchair user with a serious health condition, which includes spinal cord injury, paraplegia, chronic urinary tract infection, chronic pyelonephritis (kidney infection), paraproctitis, ischemic heart disease, chronic heart failure, hypertension, thyroid gland disease, hepatitis C, and non-insulin-dependent diabetes. He became paralysed in 1993 following an assassination attempt, in which his spine was badly injured.

Between 1998 and 2013, Mr. [REDACTED] was the mayor of [REDACTED], Republic of [REDACTED], in the Russian Federation. In June 2013, he was arrested and placed in custody pending trial in connection with criminal proceedings instituted against him on suspicion of organised aggravated murder and attempted murder of State officials, and was later charged also with an attempted terrorist attack.

On 12 August 2013, Mr. [REDACTED] lodged an application with the European Court of Human Rights complaining that he was not receiving adequate medical assistance in detention. On 27 November 2014, the Court delivered a judgement in the case, finding, inter alia, that there had been a violation of article 3 of the

European Convention on Human Rights because of the authorities' failure to provide Mr. [REDACTED] with adequate medical care. In fact, the Court found that Mr. [REDACTED] had been left without the medical assistance vital for his illnesses, the treatment received was incomplete and the medical supervision afforded to him was insufficient to maintain his health. The Court also found a violation of article 34 by failing to comply with the indicated interim measure, namely to carry out an independent medical expert assessment of the state of Mr. [REDACTED]'s health (see [REDACTED] v. Russia, no. [REDACTED]). The Court held that the authorities should admit Mr. [REDACTED] to a specialized medical facility and be held under constant medical supervision and provided with adequate medical services corresponding to his needs, or alternatively place him in a specialised prison medical facility if the requisite level of medical supervision and care could be guaranteed. The Government did not comply with these measures.

On 27 August 2015, the Military Court of the North-Caucasus Circuit found Mr. [REDACTED] guilty of having organised an act of terrorism and an attempted murder, and was sentenced to life imprisonment in a high-security correctional colony. The Supreme Court of Russia upheld the conviction and sentence on 24 March 2016.

On 17 November 2015, Mr. [REDACTED] lodged a second application with the European Court of Human Rights complaining about the conditions of his detention and lack of appropriate medical care.

In April 2016, Mr. [REDACTED] was sent to serve his sentence at the correctional colony No. 6 in Orenburg Region, where he was placed in a cell of the medical unit, equipped with a wide bed, a low-level sink and a medical couch for self-catheterisation procedures. The detention facility has only a general doctor (for approximately 1000 patients) and one tuberculosis specialist. The facility lacks ramps and lifts, and Mr. [REDACTED] has to be carried by other inmates every time he wishes to access the yard or meeting rooms. Because of the lack of medical personnel, Mr. [REDACTED] has to be assisted by other inmates for his daily needs, which include urinating and defecating, getting up from bed, bathing and dressing. He has no access to permanent healthcare, rehabilitation and other therapeutic treatment required by his medical condition. According to the information received, Mr. [REDACTED] is under constant video surveillance, including when he goes to the toilet.

Between August and October 2017, Mr. [REDACTED] had at least four severe medical crises (including hypertonic crises) requiring urgent medical assistance, during which he was left unattended for several hours (up to eight hours in one case). In some cases he was attended by either medical assistants in the absence of the doctor or by the tuberculosis specialist, who did not know what to do to help him.

One of the incidents occurred in August 2017 in the presence of monitors from the Orenburg Regional Public Commission for Monitoring the Protection of Human Rights in Detention, who tried unsuccessfully to request urgent medical assistance from the prison authorities.

On 28 September 2017, the above-mentioned Commission issued a report attesting to the violation of Mr. ██████'s right to health, including access to healthcare in correctional colony No. 6. The report mentions that the correctional authorities neglected Mr. ██████'s serious health condition, which is deteriorating, while he does not have access to a specialised doctor; the catheterisation and cleansing of his bowels takes place in unsanitary conditions, the latter in a small room intended for showering used by some 100 inmates.

On 17 October 2017, the European Court for Human Rights held unanimously that a violation of article 3 of the European Convention had occurred, on account of the poor quality of medical treatment in the remand prison and the inappropriate conditions of his detention in the correctional colony (see ██████ v. Russia, no. ██████). The Court also noted that the efforts made by the custodial authorities to accommodate the applicant's needs were mostly limited to the facilities in his cell, while the overall facility was not accessible. The Court also expressed concern that, as a wheelchair user serving a life sentence, this situation increased his dependency from other inmates, instead of being assisted by qualified nurses, for his daily needs. The Court concluded that the inappropriate conditions of detention on which Mr. ██████ is held in correctional colony No. 6 in Orenburg Region amount to inhuman and degrading treatment.

Medical examinations of detainees are conducted in conformity with the Governmental Decrees no. 54 of 6 February 2004 and no. 598 of 15 May 2017. Accordingly, following a written request from a detainee or his/her legal representative for a medical examination, the director of the detention facility decides whether to grant this examination. If so, the examination is performed within five days from the moment when an authorization is granted. On 15 November 2017, Mr. ██████ presented a request to have an independent medical examination to the director of the correctional colony, claiming that the illnesses he has are included in the list of conditions precluding detention as per Decree no. 598, which remained unanswered.

On 20 November 2017, the lawyer of Mr. ██████ appealed through the Sol-Iletsk court of the Orenburg Region against the correctional facility to have Mr. ██████ examined by an independent medical commission.

On 6 December 2017 the Sol-Iletsk court of the Orenburg Region is expected to hear the case of Mr. ██████.

Without prejudging the accuracy of these allegations, we are expressing concern at the reported situation of Mr. [REDACTED], a person with disabilities detained in inadequate conditions of detention, which may amount to cruel, inhuman and degrading treatment, and denial of reasonable accommodation and adequate access to healthcare at the correctional colony No. 6 in Orenburg Region, which further violates Mr. [REDACTED]'s right to health.

As indicated by the European Court of Human Rights, we express grave concern at the alleged inadequate conditions of detention at the correctional colony No. 6 in Orenburg Region, which may well amount to inhuman or degrading treatment. Therefore, we call on the State to exercise its duty and take immediate actions aimed at enforcing the prohibition of ill-treatment, to investigate all allegations of human rights abuse, to hold accountable those responsible and to provide remedies for the victim, including adequate compensation and rehabilitation.

In connection with the above alleged facts and concerns, we would like to remind your Excellency's Government of the applicable international human rights norms and standards relevant to this case, including the obligation to ensure that persons with disabilities may exercise fully and effectively all their human rights and fundamental freedoms on an equal basis with others, notably in the enjoyment of the right to liberty and security of the person, freedom from torture or cruel, inhuman or degrading treatment, respect for privacy, physical and mental integrity, health, reasonable accommodation, habilitation and rehabilitation, and freedom from exploitation, violence and abuse.

In this regard, we would like to refer to the Convention on the Rights of Persons with Disabilities, ratified by Russia on 3 May 2012. We would like to stress in particular the rights of persons with disabilities, as enshrined in articles 9 (accessibility), 14 (liberty and security of the person), 15 (freedom from torture or cruel, inhuman or degrading treatment or punishment), 16 (freedom from exploitation, violence and abuse), 17 (protecting the integrity of the person), 22 (respect for privacy), 25 (health) and 26 (habilitation and rehabilitation).

Article 14 in conjunction with article 5 of the Convention requires States to ensure that persons with disabilities who are deprived of their liberty are entitled, on an equal basis with others, to guarantees in accordance with international human rights law, including by providing reasonable accommodation and ensuring conditions of accessibility. States have an obligation to ensure that treatment and conditions during arrest and detention do not discriminate directly or indirectly against persons with disabilities and that they respect their inherent dignity. Article 15 complements other human rights instruments on the prohibition of torture or any form of cruel, inhuman or degrading treatment inflicted under any pretext or circumstance. In order to prevent the

occurrence of all forms of abuse and to assist victims in bringing complaints before the law enforcement bodies, article 16(3) sets an obligation for States to ensure the independent monitoring of all facilities and programmes designed to serve persons with disabilities. Article 25 requires States, inter alia, to provide those health services needed by persons with disabilities specifically because of their disabilities and to prevent discriminatory denial of healthcare or health services on the basis of disability.

Furthermore, the above-mentioned facts appear to be in contravention to article 10 of the International Covenant on Civil and Political Rights, ratified by Russia on 16 October 1973. Article 10(1) of the ICCPR establishes that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The Human Rights Committee has explained that this provision applies to anyone deprived of their liberty under the laws and authority of the State, including in prisons, hospitals, psychiatric institutions, detention camps, correctional institutions or elsewhere, without discrimination. It has also recalled that this provision supplements the ban on torture and other cruel, inhuman or degrading treatment or punishment established in article 7 of the ICCPR (See General comment No. 21, 1992, paras. 2-3).

We also refer to articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Russia on 3 March 1987, which provide for the prohibition of torture and other acts of cruel, inhuman or degrading treatment or punishment as an absolute and non-derogable human rights standard.

We would further like to draw your attention to article 12 of the International Covenant on Economic, Social and Cultural Rights, which Russia acceded to on 16 October 1973 which establishes the right to the highest attainable standard of physical and mental health. In this context, General Comment No. 14 of the Committee on Economic, Social and Cultural Rights indicates States' obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services. Furthermore, Rule 5(2) and Rule 27(1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (A/RES/70/175), provide that prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis, and that prisoners who require specialized treatment shall be transferred to specialized institutions or to civil hospitals.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the steps taken by your Excellency's Government to safeguard the rights of Mr. [REDACTED] in compliance with international human rights instruments.

As 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/or comments you may have on the above-mentioned allegations.
2. Please explain why the request of Mr. [REDACTED] to undergo a specialised medical examination, as foreseen by Governmental Decrees no. 54 of 6 February 2004 and no. 598 of 15 May 2017 has not been granted.
3. Please provide information on the steps taken to implement the decisions of the European Court of Human Rights of 24 November 2014 and 17 October 2017 respectively.
4. Please provide information regarding the measures taken to provide reasonable accommodation and adequate medical care for Mr. [REDACTED] while in detention.
5. Please provide information regarding the measures taken to ensure the general accessibility of correctional colony No. 6 in Orenburg Region.
6. Please provide the details, and where available the results, of any investigation carried out in relation to the conditions of detention in correctional colony No. 6 in Orenburg Region.

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.

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.

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.

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