

Mandates of the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the human rights of migrants

REFERENCE:
AL RUS 4/2018

20 March 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 34/5 and 34/21.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning charges against human rights defender Mr. Bakhrom Khamroev under article 322.3 of the Criminal Code of the Russian Federation, in relation to allegedly fictitious registration of migrants at his address.

Mr. Bakhrom Khamroev is a migrants' rights defender, human rights lawyer and Head of "Erdam" (Help), an organisation which works to protect and promote the rights of migrant workers from Central Asia in Russia.

Mr. Khamroev has been the subject of two previous communications on 20 December 2010, case no. RUS 10/2010 and on 24 June 2011, case no. RUS 7/2011. We thank the Government's replies to both of these communications.

According to the information received:

On 12 February 2018, Mr. Bakhrom Khamroev was requested by the precinct migration officer of his area to indicate the number of people registered with him at his address. Mr. Khamroev had had two migrants legally registered and living at his apartment over the last two years. One of whom, a citizen of Kyrgyzstan, was registered with Mr. Khamroev since May 2016 and had been certified with temporary asylum until 25 February 2018 and the other, a citizen of Tajikistan, was registered by Mr. Khamroev on 16 January 2017 and applied to the Migration Service of the Ministry of Interior of Russia for the issuance of a temporary residence permit on 22 June 2017. Mr. Khamroev had made his actions known to migration authorities during the process of organising the migrants' registration. On 12 February 2018, both were living with him at his apartment and no answer had been given to the application made on 22 June 2017. Registration provides migrants or asylum seekers the right to remain in Russia pending further deliberations on their status and provides them with access to social and medical care.

On 15 February 2018, after providing details of the two migrants' registration to the precinct officer, the decision to open a criminal case against him was

communicated by the department of the Ministry of Internal Affairs of Russia in the Bibirevo district of Moscow on charges under article 322.3 of the Criminal Code of the Russian Federation for having allegedly assisted in the “fictitious” registration of foreign citizens’ residency. According to the court’s decision, Mr. Khamroev was guided by “personal interest” on the basis that he may have taken money to facilitate registration, and had “allegedly deprived the migration service of the opportunity to monitor migrants’ movement on the territory of Russia and monitor whether foreigners observe migration accounting”. The Criminal Code allegedly does not stipulate the number of individuals who can be registered at a given address, nor does it narrowly define “fictitious registration”.

Concern is expressed at the criminal prosecution of Mr. Khamroev for activities related to his work as migrants’ rights defender, under purportedly ambiguous charges interpreted restrictively and ultimately impeding his work. Furthermore, we are concerned that the monitoring of migrants and foreigners may negatively affect their right to freedom of movement, free choice of residency, as well as their right to privacy.

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 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.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal and factual bases for the charges against Mr. Khamroev. Please also explain how these charges are compatible with Russia’s obligations under international human rights law.
3. Please indicate what measures have been taken to ensure that human rights defenders in Russia are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.
4. Please indicate how the monitoring by the migration service of migrants’ and foreigners’ movement on the territory of Russia complies with Russia’s international obligations, more particularly with regards to the right to privacy?

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Felipe González Morales
Special Rapporteur on the human rights of migrants

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:

Articles 12 and 14 of the International Covenant on Civil and Political Rights, ratified by Russia on 16 October 1973, which provide for the right for everyone lawfully within the territory of a State to choose their own residence, and the right to due process. The enjoyment of the rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR), are not limited to citizens of States parties but “must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (ICCPR/C/21/Rev.1/Add. 13 (2004), Para. 10).

We further wish to draw your attention to the General recommendation No. 30 (2004) of the Committee on the Elimination of Racial Discrimination calls on State parties to “guarantee the equal enjoyment of the right to adequate housing for citizens and noncitizens” and the United Nations Committee on Economic, Social and Cultural Rights general comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions, which clarifies the right to choose one’s residence, to determine where to live and to freedom of movement.

We would also like to draw your attention to Art. 17(1), which states that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

We would finally like to refer to the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 9(3)(c) and 12(2) which state that everyone has the right to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, that everyone has the right to offer relevant advice and assistance in defending human rights and fundamental freedoms and that the State shall take all necessary measures to ensure the protection of everyone against *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.