

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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

REFERENCE:
AL RUS 6/2018

30 April 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 35/15, 34/19 and 33/9.

In this connection, we would like to bring to the attention of your Excellency's Government information received concerning the **death in detention of Mr. Artem Tronin, a prisoner in Correctional Colony 37, Perm Region, on 1 January 2018 with his body bearing signs of torture.**

According to the information received:

On 23 November 2012, Mr. Artem Tronin was sentenced to 12 years in prison. In 2013, he attempted to hang himself while detained at Correctional Colony 22 and was subsequently, on 22 May 2013, placed on a suicide watch-list.

In 2016, Mr. Tronin was transferred to Correctional Colony 37, Perm Region. On 15 October 2016, two prison guards, known by the names of [REDACTED] and [REDACTED], and other unidentified individuals reportedly assaulted Mr. Tronin by beating him after he had objected to the poor detention conditions, including non-functioning bathrooms and cold air. Another prisoner who witnessed the events asked the guards to stop, however, instead, the guards also beat him.

Mr. Tronin and the other prisoner reported the beating, however there was no official response. Instead, the prison authorities filed a criminal complaint against the other prisoner under article 321 of the Criminal Code of the Russian Federation on the basis that the beatings had been fabricated. During the subsequent trial, Mr. Tronin testified in court against prison guard [REDACTED] and others and confirmed that they had assaulted and beaten him. The court however ruled in favor of the prison authorities.

Following the trial, the prison authorities of Correctional Colony 37 transferred Mr. Tronin to Correctional Colony 17 for a one-year period where he was kept in solitary confinement. Between September and November 2017, as Mr. Tronin's term in Correctional Colony 17 was coming to an end, he repeatedly voiced fears

for his life to his family and friends indicating that prison guard [REDACTED] would take revenge for having testified against him.

On 29 November 2017, Mr. Tronin was transferred back to Correctional Colony 37. On 1 December, the authorities of Correctional Colony 37 placed him on a list of persons prone to suicide and self-harm. On 15 December, the correctional authorities in addition added him to a list of prisoners inclined to violate the rules of correctional detention. Because of his inclusion on this second list, Mr. Tronin was kept separated from other prisoners in a two-person cell and with the neighboring cell empty.

On 1 January 2018, at 6 a.m., Mr. Tronin helped serve breakfast. At 9:20 a.m., he was overheard wishing another prisoner a happy new year. At 11 a.m., several prison guards discovered Mr. Tronin hanging by his neck from a rope made from torn bed sheets tied to a vent over his cell's door. The guards tried to open the cell but discovered that the lock had been stuffed with paper, preventing them from entering quickly. When they managed to open the door, Mr. Tronin was confirmed dead.

On 2 January 2018, Mr. Tronin's family learned of his death through another prisoner. On 3 January, they were officially notified by prison officials of his death. On 5 January, Mr. Tronin's remains were collected from the morgue of Correctional Colony 37. It was noted at that time that his body showed signs of torture. Upon subsequent closer examination, it was more specifically found that his front teeth had been broken in half, he had abrasions on his head, bruises on his back, arms, hands, knees, lower legs and feet, including bruising under his toe nails, torn lips, a broken nose and blood under his fingernails. Blood was also found on his underwear and pants. His shoulders had further been dislocated in a way that is consistent with the victim being hung in a swallow position of longer period of time. Even though Mr. Tronin was discovered by prison guards hanging from his neck solely by a torn bed-sheet, two different rope marks were also identified around his neck, one of which would be consistent with suffocation by a third person from behind.

Inquiries made with the Head of the detention facility about the cause of death of Mr. Tronin did not yield results and none of the reported signs of torture were reflected in the official forensic report that was produced by a medical institution that reportedly employs a family member of the Head of the detention facility as a forensic expert. The family therefore requested the Federal Penitentiary Service, the Investigatory Committee and the Prosecutor General to investigate his death. On 11 January 2018, the Perm Regional Investigatory Committee opened a criminal investigation following the complaint received with registration number [REDACTED]. On the same day, the Federal Penitentiary Service for the Perm Region also initiated an internal investigation into Mr. Tronin's death. No findings have been made available as of yet.

Without prejudging the accuracy of the information made available to us, we are expressing our concern that Mr. Tronin may have died as a result of intentional acts, deliberate omission or neglect by prison officials at Correctional Colony 37. We welcome the information that the Federal Penitentiary Service, the Investigatory Committee and the Prosecutor General have initiated an investigation into Mr. Tronin's death. We hope that it will be undertaken in an independent, impartial and objective manner, and that its findings will be fully communicated to the family of Mr. Tronin, and made public, except for information that may be protected for reasons of privacy. Should the investigation conclude that prison authorities are responsible for his death, or share a responsibility in it, we recommend that they be prosecuted under existing criminal law, in conformity with the human rights obligations of the Russian Federation under the treaties it has ratified. We would welcome a copy of its findings.

In this context, we are respectfully drawing the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the situation at hand.

The right to life is universally recognized in numerous ratified global and regional treaties and other instruments. It is set forth in article 6 of the International Covenant for Civil and Political Rights (ICCPR) as well as article 2 of the European Convention on Human Rights (ECHR). The Russian Federation ratified both instruments in 1973 and 1998, respectively. The right to life is non-derogable and the prohibition of extrajudicial executions applies regardless of detainees' status or of any offenses with which they might be charged. Similarly, the absolute prohibition of torture is guaranteed by article 7 ICCPR, article 2 of the Convention against Torture (CAT), and article 3 ECHR.

When a person dies in custody, a large body of international human rights jurisprudence establishes that the burden lies primarily on the State to prove that the death did not result from acts or omissions attributable to it. The Human Rights Committee clarified in *Eshonov v. Uzbekistan, Communication No. 1225/2003*, that "a death in any type of custody should be regarded as prima facie a summary or arbitrary execution" and stressed that "there should be thorough, prompt and impartial investigation to confirm or rebut the presumption, especially when complaints by relatives or other reliable reports suggest unnatural death." The European Court of Human Rights ruled, in *McCann and others v. United Kingdom*, that "the obligation to protect the right to life [...] requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, *inter alios*, agents of the State." All deaths of persons in State custody must therefore be investigated.

According to the Minnesota Protocol on the Investigation of Potentially Unlawful Death which in 2016 updated the original UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions of 1991; and the UN Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989), an investigation must be a) prompt; b) effective and thorough; c) independent and impartial; and d) transparent. We recommend that the procedure

followed for the investigation ordered into the death of Mr. Tronin be guided by these methodological protocols. An effective and thorough investigation requires that the State collects and reviews the relevant evidence to determine whether the right to life was violated and seek to identify those responsible. This does not mean that the investigation should focus solely on identifying a perpetrator, but also determine if there had been a failure to take reasonable measures to prevent the death, as well as any policies that may have contributed to the death.

The elements of independence and impartiality demand that an investigation be free of bias or undue influence. This means, as well articulated by the European Court of Human Rights in 2005, in the *Case of Isayeva v Russia*, that the persons responsible for and carrying out the investigation must be independent from those implicated in the events. The Court added that “[t]his means not only a lack of hierarchical or institutional connection but also a practical independence.”

The investigation must be open and transparent to maintain public confidence in the investigatory process and rule of law. The European Court noted in the 2001 *Case of Hugh Jordan v. the United Kingdom* that “the degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.

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 any comment you may have on the above-mentioned allegations.
2. Please provide information about the medical examinations carried out by qualified health-care professionals: i) following reports of beatings of Mr. Tronin’s in October 2016; ii) at his admission in, and transferred from Correctional Colony 17, and iii) at his re-admission in Correctional Colony 37 in November 2017. Please provide details about qualified health-care professionals’ identification of Mr. Tronin’s healthcare needs, including (but not limited to) healthcare expert identification of signs of psychological or other stress linked to risks of suicide or self-harm, notably prior to Mr. Tronin’s placement on a list of persons prone to suicide and self-harm by prison-staff.
3. Please provide detailed information about the healthcare, support and treatment provided to Mr. Tronin in Correctional Colony 37 following his placement on a list of persons prone to suicide and self-harm.

4. Please provide information on any investigation undertaken into the causes and circumstances of the death of Mr. Tronin and methodology used, including with regard to ensuring its independence, impartiality, objectivity and transparency. As mentioned above, we would welcome a copy of the findings of the joint investigation undertaken by the Federal Penitentiary Service, the Investigatory Committee and the Prosecutor General. In particular, please indicate steps taken to ensure his family is notified of the process and developments in the investigations that are taking place or will take place.
5. Please explain the manner in which medical ethics and professional standards, in particular physicians' duty to exercise independent professional judgment, were applied when elaborating the forensic report that was produced following the death of Mr. Tronin.
6. Please indicate which steps, if any, are foreseen or have been taken to respond to the use of force by prison officials, including measures to comply with the rules and principles pertaining to necessity and proportionality. In addition, we would welcome information on existing measures to ensure that abuses of power by penitentiary personnel against persons in detention, including physical and mental ill-treatment, are diligently investigated and sanctioned in a manner that would deter their recurrence, and ensure strict conformity by prison staff with prison rules of discipline.
7. Please indicate which regulations and policies exist to respond to the physical and mental needs of persons in detention. How are such regulations and policies implemented, and their implementations monitored?

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.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Nils Melzer

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

Dainius Pūras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, 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.

Article 6(1) and 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973, provide that every human being has the inherent right to life and that no one shall be arbitrarily deprived of his or her life nor subjected to torture or to cruel, inhuman or degrading treatment or punishment. Moreover, article 10 ICCPR requires that all persons deprived of their liberty be treated with humanity and respect for the inherent dignity of the human person. The Human Rights Committee in its General comments no. 6 and 31 confirmed that the protection of the right to life under the Covenant requires that the State protect individuals from violations by its own agents as well as private individuals or entities and adopt positive measures to do so.

The State carries a heightened level of due diligence obligations for all persons in their custody. As such, when an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility (see, for instance, the Human Rights Committee's views in the case of *Dermot Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2).

In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, States must investigate all such cases "promptly, thoroughly and effectively through independent and impartial bodies" as laid down in the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (see CCPR/C/21/Rev.1/Add.13, para. 15) and the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016). The Minnesota Protocol also stresses that family members have the right to "seek and obtain information on the causes of a killing and to learn the truth about the circumstances, events and causes that led to it." Therefore, absent a compelling need to protect the public interest or the legal rights of the victims and their families, the State party must disclose all relevant details about the investigation to the victim's next of kind and make all evidence and its findings public.

The Convention against Torture (CAT), ratified by the Russian Federation on 3 March 1987, further contains an absolute and non-derogable prohibition of torture and under articles 2(1) and 16(2) requires that the State all necessary measures to prevent torture and acts of cruel, inhuman or degrading treatment or punishment committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Moreover, articles 12 and 13 CAT provide the right to individuals who allege that they have been subjected to torture to complain and to have their case promptly and impartially investigated by the competent authorities, and the duty on these authorities to proceed with such investigations in a prompt and impartial

fashion. The State must further take the necessary measures to protect the complainant and any witnesses against ill-treatment or intimidation as a consequence of the complaint or evidence given.

In this context it is relevant to note that the Committee against Torture in its concluding observations adopted at its 49th session in 2012 (CAT/C/RUS/CO/5, para. 6) expressed its concerns over persistent reports of the widespread practice in the Russian Federation of torture and ill-treatment of detainees. The Committee recommended that “As a matter of urgency, the State party should take immediate and effective measures to prevent all acts of torture and ill-treatment throughout the country and to eliminate impunity for those allegedly responsible.”

In addition, article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which the Russian Federation acceded to on 16 October 1973, establishes the obligation of States to respect the right to physical and mental 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. The revised UN Standard Minimum Rules for the Treatment of Prisoners, usually referred to as the Nelson Mandela Rules (rules 22–35; 52; 62; and 71, para. 2), further establish States’ responsibility to provide healthcare for prisoners.

In particular, a physician or other qualified healthcare professionals, shall examine every prisoner as soon as possible following his or her admission to i) identify healthcare needs and take all necessary measures for treatment; ii) identify any ill-treatment prior to admission; iii) identify any signs of psychological or other stress, including, but not limited to, the risk of suicide or self-harm and undertake all appropriate individualized measures or treatment (Rule 30). Qualified healthcare professionals shall have daily access to all prisoners who complain of mental (or physical) health issues (Rule 31). The exercise of healthcare duties in prisons are governed by the same ethical and professional standards as those applicable in the community, including the duty to protect prisoners’ mental (and physical) health and provide treatment on the basis of clinical grounds only (Rule 32) as well as the duty to exercise independent professional judgment according to the International Code of Medical Ethics as last amended during the 57th World Medical Association General Assembly of October 2006. According to ethical medical standards independent professional judgment should be applied when elaborating forensic reports following death by suspected suicide.