

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the right to privacy; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

REFERENCE:
AL RUS 14/2018

11 July 2018

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the right to privacy; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism pursuant to Human Rights Council resolutions 33/30, 34/18, 32/32, 34/5, 37/2 and 31/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and charges against Mr. Server Mustafayev, in Bakhchisaray, Autonomous Republic of Crimea and city of Sevastopol (hereinafter "Crimea")¹, as well as the search of his house and seizure of his property.

Mr. Server Mustafayev is a human rights defender and coordinator of Crimean Solidarity, a civil society initiative which aims to protect the rights and families of detainees in Crimea. Its activities include monitoring and documentation of human rights violations in Crimea, providing legal aid and financial support and observing trials.

According to the information received:

On 21 May 2018, at approximately 7.00 p.m., Mr. Mustafayev's home in the town settlement of Bakhchisaray was entered and searched by masked Federal Security Bureau agents. During the three-hour search Mr. Mustafayev was not permitted to have a lawyer present and electronic equipment as well as other documents were seized. He was then arrested and brought to the Federal Security Department for interrogation. During his interrogation, he was permitted to have a lawyer and interpreter present.

¹ General Assembly resolutions 68/262, 71/205 and 72/190 prescribe that Crimea is a territory of Ukraine under the temporary occupation of the Russian Federation.

On 22 May 2018, Kievsky District Court ordered Mr. Mustafayev's continued pre-trial detention until 9 June 2018 in a camera hearing, on charges of "participating in the activities of a terrorist organisation" under article 205.5.2 of the Criminal Code of the Russian Federation. The charges relate to allegations of his involvement with Hizb ut-Tahrir, a designated terror organisation under Russian law. If convicted, he may face up to 10 years in prison. In Ukraine, Hizb ut-Tahrir is not regarded as a terror organisation.

On 6 June 2018, Mr. Mustafayev's pre-trial detention was extended until 9 August 2018.

Serious concern is expressed over the arrest and detention of Mr. Mustafayev for reasons seemingly linked to his peaceful and legitimate work in the defence of human rights. Additional concern is expressed over the use of counter-terrorism legislation in order to criminalise the human rights defender's work, as the use of such provisions risks conflating his peaceful and legitimate work with activities that are prejudicial to state security.

We wish to bring to your Excellency's Government's attention that as the charges against Mr. Mustafayev relate to his alleged involvement with Hizb ut-Tahrir, a group which is not designated as a terrorist organisation under Ukrainian law, Russia, as the temporary occupying power, may be in contravention with article 43 of the Regulations Respecting the Laws and Customs of War on Land, annexed to the Fourth Convention Respecting the Laws of War on Land signed in The Hague on 18 October 1907 ("Hague Regulations") and article 64 of the Fourth Convention Relative to the Protection of Civilian Persons in Time of War signed in Geneva on 12 August 1949 ("Geneva Convention IV"), under which it is forbidden for an occupying power to impose a penal legal framework upon the occupied territory. The only exemptions to these provisions are where the penal laws already in force in the occupied territory constitute a threat to the security of the occupying state, present an obstacle to the implementation of the Fourth Geneva Convention, or, in the case of The Hague Regulations, where the occupying power is absolutely prevented from maintaining the laws already in force in the country.

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 arrest and detention of, and charges against Mr. Mustafayev, as well as the search of his house and seizure of his property, and explain how these are compatible with Russia's obligations under international human rights standards, especially with regard to the International Covenant on Civil and Political Rights.
3. Please kindly indicate what measures have been taken to ensure that human rights defenders under the jurisdiction of the Russian Federation in Crimea, in line with UN General Assembly resolutions 71/205 and 72/190, are able to carry out their legitimate work, and exercise their rights to freedom of expression and freedom of association, in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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.

With reference to General Assembly resolutions 68/262 (27 March 2014), 71/205 (19 December 2016) and 72/190 (19 December 2017), we wish to inform you that a copy of this letter will also be sent to the authorities of Ukraine for their information.

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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter 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 letters in no way prejudge any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

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

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Joseph Cannataci
Special Rapporteur on the right to privacy

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

Annex
Reference to international human rights law

We wish to draw to the attention of your Excellency's Government that UN General Assembly resolutions 68/262, 71/205 and 72/190 prescribe that Crimea is a territory of Ukraine under the temporary occupation of the Russian Federation. The Russian Federation in Crimea is therefore bound by international instruments defining the obligations of an occupying power, as well as international human rights law.

In connection with above alleged facts and concerns, we would like to draw your attention to articles 9, 14, 17, 19 and 22 of the International Covenant on Civil and Political Rights, ratified by Russia on 16 October 1973, which guarantee the rights to liberty and security of person, due process, freedom of opinion and expression and freedom of association as well as the right not to be subjected to arbitrary interference with one's privacy or home.

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).

In this regard, we would like to bring to your Excellency's Government's attention that in his report to the General Assembly on impact of counter-terrorism measures on civil society, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds. (A/70/371, para 46(c)).

We would also like to refer to Resolution 24/5 of the Human Rights Council which Reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.

In connection with the above alleged facts and concerns 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(a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- Article 6(b and c), which provides for the right to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.