

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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

REFERENCE:
UA RUS 16/2018

25 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; 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, 33/9, 34/5 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 continued imprisonment of Mr. **Oleg Sentsov**, and his physical and mental integrity as linked to alleged torture and ill-treatment and a subsequent hunger strike undertaken to protest his imprisonment.

Mr. Oleg Sentsov is a Ukrainian film director and human rights defender. He has been an outspoken critic of the Russian occupation of the Autonomous Republic of Crimea and the city of Sevastopol (hereafter "Crimea")¹. 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 occupation of Crimea.

Concerns at the arrest and conviction of Mr. Sentsov formed the subject of a communication by several Special Procedures mandate holders sent on 17 October 2017 (RUS 8/2017). We thank your Excellency's Government for the detailed reply of 27 February 2018. We take note of the assertion that the court has found Mr. Sentsov guilty of crimes of terrorism and that his actions were not connected with his work as a journalist and film director. However, we remain concerned at allegations that the legal proceedings against Mr. Sentsov did not comply with international standards for due process and fair trial. We thus remain concerned at the continued imprisonment of Mr. Sentsov and at his physical and mental integrity.

¹ As recognized by UN General Assembly resolutions 71/205 and 72/190

According to the new information received:

On 14 May 2018, Mr. Oleg Sentsov, in his fourth year in prison, went on hunger strike and said he will only start eating again if he and all the Ukrainian political prisoners are released. There are currently 64 Ukrainian nationals imprisoned on what are reportedly politically motivated charges.

Mr. Sentsov has lost considerable weight, and according to doctors irreversible consequences of the hunger strike have likely occurred. The deterioration of his physical integrity linked to the hunger strike comes in addition to an already weakened health situation due to the reported torture he was subjected to in an attempt to extract a confession, in addition to beatings he received in detention, the treatment received in solitary confinement in the Lefortovo prison, his trial period in Rostov-on Don, his remand in Prison No 1 in Yakutia and most recently in the “White Bear” Prison Colony in Labytnangi, north of the Arctic Circle.

In mid-July, Mr. Sentsov reportedly agreed to take 3-4 table spoons of nutrition mixture per day. His heart muscle is reportedly weakened and his health situation considerably worsened.

Mr. Sentsov’s hunger strike has reportedly been covered by the largest state news agency of the Russian Federation with the following title “A terrorist has taken himself hostage and is demanding that Russia surrender”.

A number of writers, actors, directors and individuals have written open letters to Russian authorities about the situation of Mr. Sentsov. An unknown number of people have staged one-person protests by holding a poster in crowded places. However, due to the regulations introduced in advance of the World Cup, authorities require a permit for one-person protests. It has been reported that some protesters have been detained and at least one also sentenced to fifteen days of administrative imprisonment for her protest.

We express serious concern at the physical and mental integrity of Mr. Sentsov and at the allegations of torture and ill-treatment. We further express our dismay at the failure by the authorities to address the violations that have given rise to the use of hunger strike as the ultimate form of protest. We reiterate our concern at the conviction of Mr. Sentsov, which represents a criminalization of the legitimate exercise of his 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. Equally, we reiterate our 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.

We respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian 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.”

In addition, we would like to refer to article 12 of the International Covenant on Economic Social and Cultural Rights acceded to by Russia in October 1973 which establishes the right to physical and mental health and States’ obligation to refrain from denying or limiting equal access, including to prisoners or detainees, to health services. The UN Standard Minimum Rules for the Treatment of Prisoners, or the Mandela Rules (rules 22–26; 52; 62; and 71, para. 2), further establish States’ responsibility to provide healthcare for prisoners, including prompt access to medical attention in urgent cases and the transfer of prisoners who require specialized treatment to specialized institutions or civil hospitals (Rule 27). Finally, informed consent in health is an integral part of respecting, protecting and fulfilling the enjoyment of the right to health (A/64/272, Para.18) and as such any medical intervention linked to the hunger strike should guarantee informed consent as a fundamental feature of respecting an individual’s autonomy, self-determination and human dignity.

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.

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 initial steps taken by your Excellency’s Government to safeguard the rights of Mr. Senstov in compliance with international 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 comment(s) you may have on the above-mentioned allegations.
2. Please indicate what measures have been taken to guarantee the physical and mental integrity of Mr. Oleg Sentsov and to ensure that he is protected

against any form of torture or other cruel, inhuman or degrading treatment or punishment.

3. Please indicate what measures have been taken to investigate the allegations of torture and other cruel, inhuman or degrading treatment or punishment to which Mr. Oleg Sentsov has been subjected to. In particular please provide information about measures taken to prevent them from reoccurring and to investigate and bring to justice in accordance with international human rights law those found responsible.
4. Please provide information about the measures taken to protect Mr. Sentsov's right to receive adequate healthcare with his full and informed consent.
5. Please provide information in details of how your Excellency's Government's counter-terrorism and extremism efforts comply with the United Nations Security Council resolutions [1373 \(2001\)](#), [1456\(2003\)](#), [1566 \(2004\)](#), [1624 \(2005\)](#), [2178 \(2014\)](#), [2341 \(2017\)](#), [2354 \(2017\)](#), [2368 \(2017\)](#), [2370 \(2017\)](#), [2395 \(2017\)](#) and [2396 \(2017\)](#); as well as Human Rights Council resolution [35/34](#) and General Assembly resolutions [49/60](#), [51/210](#), [72/123](#) and [72/180](#), in particular with international human rights law, refugee law, and humanitarian law.

While awaiting a reply, we call on Russian authorities to unconditionally release Mr. Sentsov.

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 has been sent to the authorities of Ukraine for their information.

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.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate

a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

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