

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 situation of human rights defenders; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
UA RUS 17/2018

18 July 2018

Excellency,

We have the honour to address you in our capacity 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 situation of human rights defenders; and 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, 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 continuing detention of human rights defender Mr. Emir Usein Kuku.

Mr. Kuku is a human rights defender and chairman of the Yalta-based Crimean Contact Group on Human Rights. The organisation monitors human rights violations, provides legal support, and reports on enforced disappearances in Crimea¹. He is a member of the Crimean Human Rights Movement and has advocated for the rights of the Muslim ethnic minorities, including Crimean Tatars, who have been subjected to discrimination and persecution, particularly since the Russian Federation's occupation of Crimea in 2014.

According to the information received:

Mr. Kuku has been in pre-trial detention since February 2016. He was detained in Simferopol, Crimea, before being moved more than 700 kilometres from his family, to Rostov-on-Don in the Russian Federation in December 2017.

Mr. Kuku is facing charges of "involvement in a terrorist organisation", "preparation of a crime", "commission of a crime by a group of persons by previous concert" and "forcible seizure of power or forcible retention of power" under part 2 of Article 205.5, part 1 of Article 30, part 2 of Article 35 and Article 278 of the Criminal Code of the Russian Federation, respectively. The charges

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

relate to allegations of his involvement with Hizb ut-Tahrir, which is a designated terrorist organisation by the Russian Federation but not by Ukraine. Mr. Kuku denies all charges, believing that he is being persecuted for his human rights activities and for his refusal to act as an informant for the Russian Federation's Federal Security Service (FSB).

On 26 June, Mr. Kuku initiated a hunger strike to protest the charges against him. On 10 July 2018, Mr. Kuku's lawyer went to meet with him in Rostov-on-Don's pre-trial detention facility no. 4 but on arrival, he was told that Mr. Kuku was no longer in the facility. Later that day, the lawyer was told that Mr. Kuku was in the facility but had been taken for a medical check-up due to his deteriorated health. His lawyer was finally able to meet with him after the check-up and was informed that Mr. Kuku had lost 9 kilogrammes and was being kept in solitary confinement.

Serious concern is expressed over the ongoing detention of Mr. Kuku and the charges he is facing for reasons seemingly linked to his peaceful and legitimate work in defence of human rights. Additional concern is expressed at Mr. Kuku's physical health, given his continuing hunger strike and severe weight loss, and his mental health, given that he is being subjected to solitary confinement. Concern is also expressed over the use of counter-terrorism legislation to criminalise Mr. Kuku's work in defence of human rights in Crimea.

We would like to draw attention to articles 9, 10, 14 and 19, of the International Covenant on Civil and Political Rights (ICCPR) acceded to by your Excellency's Government on 16 October 1973, which guarantee the right to liberty and security of person, to not be subjected to arbitrary arrest or detention, to be presumed innocent until proven guilty in a public trial, to have the right to challenge the legality of detention, and to freedom of opinion and expression.

We would also like to inform your Excellency's Government that the above mentioned allegations appear to be in contravention with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988. Principles 11 and 20 stipulate that a detained person shall be entitled to a review of the continuance of their detention, and that they shall be kept in a place of detention near their usual residence if they so request. We also wish to direct your Excellency's Government's attention to Principle 7 of the Basic Principles for the Treatment of Prisoners, which states that efforts should be made to abolish solitary confinement.

Finally, we wish to refer to the UN Declaration on Human Rights Defenders. In particular, the allegations appear to be in contradiction to articles 1 and 2 of the UN Declaration on Human Rights Defenders, which state that everyone has the right to strive

for the protection of human rights and that each State has a duty to implement all human rights.

In addition, we would like to mention that in line with UN General Assembly resolutions 71/205 and 72/190, the obligations of the Russian Federation as an Occupying Power are set out under international humanitarian law and include, under 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”), the obligation to respect the laws of the occupied territory.

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.

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 the above-mentioned person(s) 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 any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on how the detention and charges against Mr. Kuku are in conformity with international human rights law, especially with regards to articles 9 and 14 of the ICCPR and principles 11, 18, and 20 of A/RES/43/173. In particular, please provide information about the evidence used to substantiate the charges against Mr. Kuku.
3. 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.

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.

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.

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.

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

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