

Mandates of 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 and the Special Rapporteur on the situation of human rights defenders.

REFERENCE:
UA RUS 21/2018

10 August 2018

Excellency,

We have the honour to address you in our capacity as 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; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 34/18, 33/9 and 34/5.

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 grave health situation.

Mr. Oleg Sentsov is a Ukrainian film director and human rights defender.

Concerns at the arrest and conviction of Mr. Sentsov formed the subject of two previous communications by several Special Procedures mandate holders sent on 25 July 2018 (ref. no RUS 16/2018) and on 17 October 2017 (ref. no RUS 8/2017). We thank your Excellency's Government for the detailed reply of 27 February 2018.

Furthermore, we have noted your Excellency's Government's rejection of General Assembly resolutions 68/262; 71/205; and 72/190, in the reply of 7 August 2018.

Our concerns remain that Mr. Sentsov is detained because of his political expression. We take note of the assertion in your Excellency's Government's reply of 17 October 2017, 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. We remain concerned at allegations that the legal proceedings against Mr. Sentsov did not comply with international standards on due process and fair trial. We thus remain concerned at the continued imprisonment of Mr. Sentsov and at the deterioration of his physical and mental integrity, and call for his release from an imprisonment that appears to be unlawful under international human rights law.

Given Mr. Sentsov's extremely deteriorated health conditions, we moreover urge Your Excellency's Government to ensure Mr. Sentsov's unrestricted access to appropriate health care, as well as his ultimate release on health grounds.

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), ratified by the Russian Federation on 3 March 1987, in article 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified on 16 October 1973, and in article 3 of the European Convention on Human Rights, ratified 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 trial before an independent and impartial tribunal, in accordance with articles 9 and 14 of the ICCPR and article 6 of the European Convention on Human Rights.

We moreover refer to article 19 of the ICCPR and article 10 of the European Convention on Human Rights 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, ratified on 16 October 1973, which establishes the right to physical and mental health and the obligation of States parties to refrain from

denying or limiting equal access to health services, including to prisoners or detainees. The UN Standard Minimum Rules for the Treatment of Prisoners, or the Mandela Rules, further establish States' responsibility to provide access to 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 (see rules 22–27, 52, 62 and 71, para. 2). Informed consent is an integral part of respecting, protecting and fulfilling 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. Oleg Sentsov 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 any comment you may have on the above-mentioned allegations.

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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We intend to publicly express our concerns, since 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.

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