

Mandates of 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 independence of judges and lawyers

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as 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 independence of judges and lawyers, pursuant to Human Rights Council resolutions 34/18, 34/5, 35/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **disbarment of Mr. Emil Kurbedinov**, allegedly as an act of reprisal for his legitimate work in defense of human rights.

Mr. Emil Kurbedinov is a human rights lawyer. Since the beginning of the occupation of the Crimean peninsula by the Russian Federation, Mr. Kurbedinov has been actively involved in the defense of civil society activists, former Mejlis leaders and Crimean Muslims suspected of being members of *Hizb ut-Tahrir*, a religious organization banned in Russia (but legal in Ukraine). He is also a founder and member of the Crimean Central Bar Association. In 2017, Mr. Kurbedinov was awarded the 2017 Front Line Defenders Award for Human Rights Defenders at Risk.

According to the information received:

On 26 January 2017, Mr. Kurbedinov was arrested by a group of masked representatives from the Centre for Combating Extremism in Crimea and taken to a local directorate of the Russian Federal Security Service. The basis for his arrest was a post that Mr. Kurbedinov had uploaded on Vkontakte in 2013 containing a photo of a Simferopol rally of *Hizb ut-Tahrir*, where flags linked to this organisation were allegedly displayed. Following his arrest, the Zheleznodorozhny District Court of Simferopol, Crimea, found him guilty of publicly disseminating a symbol belonging to an 'extremist' organisation in breach of article 20, paragraph 3, of the Administrative Code of Russian Federation, and sentenced him to a 10-day administrative detention. Mr. Kurbedinov unsuccessfully appealed this decision. He served his sentence, and was released on 5 February 2017.

On 6 November 2018, Mr. Kurbedinov received a written notice in relation to the "prevention of extremist activities" in his office in Simferopol. This notice was

handed to him by a representative of the Crimean Prosecutor's Office who was accompanied by several masked men.

On 6 December 2018, Mr. Kurbedinov was arrested by officials of the Center for Combating Extremism in Crimea on his way to his office and transported to the Ministry of Internal Affairs of Crimea and Sevastopol. He was charged again for disseminating symbols of an 'extremist' organization, this time on his Facebook page in breach of article 20, paragraph 3, of the Administrative Code of Russian Federation. The following day, the Kievsky District Court of Simferopol sentenced him to five days of administrative detention. Mr. Kurbedinov appealed this decision, but the court of appeal upheld his conviction. Mr. Kurbedinov was released after serving this sentence.

On 25 December 2018, Mr. Kurbedinov received a letter from the Crimean Directorate of the Ministry of Justice of the Russian Federation, whereby he was informed that as of 1st March 2019, he would be excluded from the non-commercial organization "Central Crimean Lawyers' Association of Simferopol"¹ (membership of which is an essential pre-condition for lawyers to practice law and appear before the court) based on his previous convictions for administrative offences. Allegedly, the legal basis for his disbarment is article 15, paragraph 1.2 (4), of the Federal Law "On Non-Commercial Organisations", according to which a person who has been convicted of extremism cannot be a founder or a member of a non-commercial organisation.

If excluded, Mr. Kurbedinov would have to join within three months another non-commercial organization (necessary pre-condition for practicing law and appearing in court) and give notice to the Crimean Bar Association. Otherwise, he may lose his license to practice law. There is an imminent risk that the continuing pattern of interference with Mr. Kurbedinov's professional activities in Crimea would preclude him from registering with any other lawyers' organization, and thus lead to his disbarment.

The Law on lawyers' activity provides the duty of lawyers to notify the council of the bar association about the form of law practice they choose within three months; according to article 17, para. 2 (5), the status of a lawyer may be terminated by a decision of the council of the bar association if within four months the lawyer does not make this notification.

Without prejudging the accuracy of the information made available to us, concern is expressed at the above allegations. The threat of disbarment of Mr. Kurbedinov as result of his previous convictions for administrative offences appears to constitute an arbitrary and disproportionate measure and an act of reprisal for the legitimate exercise of his profession as a lawyer and human rights defender. In particular, we express concern that the legal basis for the convictions of Mr. Kurbedinov constitute a criminalisation of

¹ "Ассоциация «Крымская центральная коллегия адвокатов» г. Симферополь"

the legitimate exercise of freedom of expression in violation of international human rights law.

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 be grateful for your observations on the following matters:

1. Please provide any additional information and comments which you may have on the above mentioned allegations.
2. Please provide detailed information on the legal basis for Mr. Kurbedinov's arrest and conviction on 26 January 2017 and 6 December 2018, and explain how his arrest and conviction are compatible with international human rights norms and standards relating to the liberty and security of person, fair trial and freedom of expression.
3. Please provide detailed information on whether the decision of the Crimean Directorate of the Ministry of Justice of the Russian Federation can be challenged before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court.
4. Please provide information on the measures that your Excellency's Government has taken, or intends to take, to ensure the independence of the legal profession and to enable lawyers and human rights defenders to perform their professional functions freely and without any intimidation, threat, harassment or improper interference.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

With reference to General Assembly resolutions 68/262 (27 March 2014), 71/205 (19 December 2016), 72/190 (19 December 2017) and 73/263 (22 December 2018), we wish to inform you that a copy of this letter will also be sent to the authorities of Ukraine for their information.

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, the independence of the legal profession is prescribed, inter alia, in the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973, and in the Basic Principles on the Role of Lawyers.

Article 14 of the International Covenant on Civil and Political Rights provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to communicate with counsel of their own choosing. In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14(3)(b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. S/he should also be able “to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter” (CCPR/C/GC/32, para. 34).

We would also like to refer your Excellency’s Government to the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990.

Principle 13 provides that the duties of lawyers towards their clients include advising clients as to their legal rights and obligations, and assisting clients in every appropriate way, including taking legal action to protect their interests. Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. The Basic Principles also provide that disciplinary proceedings initiated against lawyers be brought before an impartial disciplinary committee established by the legal profession, an independent statutory authority, or a court, and determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles (Principles 28 and 29).

With respect the legal basis for the convictions of Mr. Kurbedinov, we would like to refer to the right to freedom of opinion and expression as guaranteed under article 19 of the ICCPR. Under article 19(3), restrictions to freedom of expression must meet the standards of *legality*, meaning that they are publicly provided by a law which meets standards of clarity and precision, and are interpreted by independent judicial authorities; *necessity and proportionality*, meaning that they are the least intrusive measure necessary to achieve the legitimate interest at hand, and do not imperil the essence of the right; and

legitimacy, meaning that they must be in pursuit of an enumerated legitimate interest, namely the protection of rights or reputations of others, national security or public order, or public health or morals (CCPR/C/GC/34). Although article 19(3) recognizes “national security” as a legitimate aim, national security considerations should be “limited in application to situations in which the interest of the whole nation is at stake, which would thereby exclude restrictions in the sole interest of a Government, regime, or power group” (A/71/373). States should “demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight” (A/71/373).

We would like to also 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 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.