

Mandates of the Special Rapporteur on freedom of religion or belief; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on minority issues; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
AL RUS 5/2020

1 September 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on freedom of religion or belief; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on minority issues; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 40/10, 42/22, 43/4, 41/12, 42/16, 43/8 and 40/16

In this connection, we would like to bring to the attention of your Excellency's Government new information we have received concerning the detention conditions of Mr. Dennis Christensen and the recent denial of mitigation of his sentence, despite a first positive decision by a judge of the Lgov District Court.

Mr. Christensen is a Danish national, who has been living in the Russian Federation for over twenty years. He is a member of the religious minority of Jehovah's Witnesses. He was arrested on 25 May 2017, a month after Russian Supreme Court's ruling declaring the Jehovah's Witnesses' organization an "extremist organization" and banning the religious activities of all of its 395 branches in the country. He was charged under Article 282.2(1) of the Russian Criminal Code for allegedly "organising extremist activity", convicted on 6 February 2019 and received a six-year prison sentence.

Mr. Christensen's case was the subject of a previous communication by our mandates (case no. RUS 22/2018 of 20 December 2018), in which we had expressed concerns over his detention, the reported lack of due process and fair trial guarantees, and over what appears to be a systematic persecution of members of the Jehovah's Witnesses' minority, who are often charged under counter-extremism provisions of the Criminal Code. We regret that your Excellency's Government's response of 16 January 2019 did not provide any specific information or clarification with regard to the allegations contained in our joint communication of 20 December 2018, and we are hoping for a more constructive engagement with regard to the present follow-up communication on this particular issue.

In addition, we wish to remind your Excellency's Government that concerns over the human rights situation of members of the religious minority of Jehovah's Witnesses and reports about acts of intimidation, violence and judicial harassment, as well as with regard to the liquidation of their Administrative Center and of all its local branches, have been raised through a number of communications (RUS 6/2015 of 11 November 2015; RUS 2/2017 of 23 March 2017; RUS 19/2018 of 14 September 2018; and, RUS 2/2020 of 5 June 2020). While we thank your Excellency's Government for its responses to these joint communications, we note with concern that violations perpetrated against members of this religious minority continue unabated, and that such violations have been intensified as a result of the designation of the Administrative Center of Jehovah's Witnesses as an "extremist organization" and the securitization and criminalization of the community's religious activities.

According to the information received:

Since May 2019, Mr. Dennis Christensen has been eligible for parole or mitigation of his prison sentence. In this context, he filed, through his lawyers, three applications with the Lgov District Court on 28 October 2019, 19 November 2019 and 13 December 2019, all of which rejected by the court on 5 November 2019, 28 November 2019, and on 24 December 2019 respectively.

A fourth application was filed on 2 April 2020 and was considered by the Lgov District Court on 23 June 2020. The judge mitigated the remainder of Mr. Christensen's sentence to a fine of RUB 400,000 (approximately USD 5,470), with a release in ten days from the date of the court decision. It is reported that the prosecution present in the hearing was also supportive of this decision.

However, two days later, a different prosecutor called for a new hearing before a different judge, asserting that the ruling of 23 June was illegal and that it should be cancelled, claiming that, based on some reports by the Lgov prison administration, Mr. Christensen allegedly lacked a favourable record of work and prison life. The same claim had already been put forward by prison officials during the hearing of 23 June, but was it rejected by the judge at that time, because medical evidence presented at 23 June hearing reportedly demonstrated that Mr. Christensen's health limitations precluded physical labour. Mr. Christensen had contracted pneumonia just a few months before and, in October 2019, he was diagnosed with a serious spinal cord condition. In addition, during the 23 June hearing, a prison representative admitted that they had no work available that would accommodate these physical limitations. The new prosecutor's actions have reportedly delayed Mr. Christensen's release until the new hearing, scheduled to take place on 4 September at the Kursk Regional Court.

Lgov prison authorities have, in the meantime, filed two additional reports against Mr. Christensen (on 26 June and on 6 July 2020, respectively), and have subjected him to enhanced punitive measures, which include prohibition to use the prison phone and extended time spent in a punishment cell, deprived of his right to

receive family visits. The first report claimed that he was in the dining hall at the wrong time, and the second claimed that he was in the barracks wearing a T-shirt without a jacket. None of these claims amount to serious violations of prison rules according to the regulations for the imposition of enhanced punitive measures, which requires that a prisoner commit a serious violation of prison rules repeatedly. The imposition of enhanced punitive measures also requires that the prisoner receive a prior medical examination, a criterion which was allegedly not met either.

He currently shares a cell measuring about three meters by two with another prisoner, without proper ventilation, with traces of mould, and he has to sleep on a hard bed, all of which further exacerbate his poor health condition.

Updates about Mr. Christensen's case came during a period of rising repression and persecution of the Jehovah's Witnesses minority in many provinces of the Russian Federation. As of mid-July 2020, there had been more than 1,000 reported home raids, with the large-scale campaign taking place on 13 July 2020, in the cities of Voronezh and Stary Oskol, where officials of the Ministry of Internal Affairs and Rosguard (the National Guard) coordinated raids against 110 homes of Jehovah's Witnesses, arresting, detaining and physically abusing at least ten individuals. Other similar law enforcement actions have recently taken place in Astrakhan and in the Transbaikal region.

At the same time, on 29 May 2020, the President of the Russian Federation signed into law the Decree No. 344 "On Adopting a Strategy to Counteract Extremism in the Russian Federation Until 2025", which sets forth a plan for the implementation of the Federal Law on Counteracting Extremist Activity. Concerns have been raised about its ambiguity, the lack of clarity around the term "extremist activity", and the risks of misapplication which would disproportionately affect members of religious minorities, and in particular Jehovah's Witnesses, following the liquidation in 2017 of their Administrative Center and its local branches.

Without prejudging the accuracy of the information made available to us, we note with concern the reported judicial harassment against Mr. Dennis Christensen and his continued detention, despite the court decision of 23 June 2020 to mitigate the remainder of his prison sentence. We are deeply concerned by the reported actions of the prosecution to challenge the mitigation decision and ultimately delay his release, particularly as this was seemingly based on Lgov prison administration's reports concerning Mr. Christensen's alleged "unfavourable work record and public life" while in detention, as well as subsequent reports describing specific cases of Mr. Christensen's conduct which, despite not amounting to serious violations of prisons rules, were used as a pretext for imposing enhanced punitive measures against him. In addition, we deeply regret that these reports have not made particular reference to Mr. Christensen physical and health condition, which prevented him from taking part in physical activities, disregarding the medical evidence and statement by the prison representative presented

during the mitigation hearing of 23 June. We are further concerned about the current conditions of detention in the punishment cell which are negatively affecting Mr. Christensen's physical integrity.

It appears that the treatment of Mr. Christensen, his prolonged detention and what seems to constitute judicial harassment against him aims at making an example of him at a time of rising repression and persecution of Jehovah's Witnesses. We recall that freedom of religion and belief is a universal right, an intrinsic aspect of a person's humanity, which allows everyone to practice their religion or belief, individually and in community with others, in private or in public. Such a right exists independently of administrative approval. The use of an ambiguously formulated definition of "extremism" to systematically restrict access to this fundamental right is contrary to Russia's obligations under 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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the factual and legal grounds for the non-implementation of the court decision of 23 June 2020 that mitigated the remainder of Mr. Christensen's sentence.
3. Please explain the reasons for the reported imposition of enhanced punitive measures against Mr. Christensen by the Lgov prison administration; provide detailed information on the type of such measures; and, explain how such measures are compatible with Russia's international human rights obligations, including the United Nations Standard Minimum Rules for the Treatment of Prisoners ("The Mandela Rules")
4. Please indicate whether any investigation or inquiry has been launched to assess the implementation of such punitive measures, and whether, in the case of abusive implementation of such measures, there has been any legal action against those responsible. If such an investigation or inquiry has not taken place, or if it has been inconclusive, please explain the reasons why.
5. Please provide information on the measures taken to ensure Mr. Christensen's physical and mental integrity while in detention and his appropriate access to timely and adequate health care.

6. Please provide updated information on the current judicial process and hearings.
7. Please provide detailed information and examples on how the national courts interpret the term “extremist activity” when considering cases of minority religions and minority religious organizations, and how this interpretation is compatible with the international norms and standards on freedom of religion or belief and freedom of expression.

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.

We would like to inform your Excellency’s Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and to the regular procedure.

Furthermore, we would like to inform your Excellency’s Government that a copy of this letter will be also shared with the Government of Denmark.

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.

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

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Special Rapporteur on freedom of religion or belief

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Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, 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 above.

We would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973, and in particular articles 2, 6, 7, 9, 10, 14, 17, 18, 19, 21, 22, 26 and 27, which provide for the right to life, liberty and security of person, the right to an effective remedy by the competent national tribunals for acts violating their fundamental rights, the right to an independent and impartial judicial process with due process guarantees, freedom of thought, conscience, religion or belief, freedom of expression, freedom of association and peaceful assembly, privacy, the principle of non-discrimination, guarantees of humane treatment while in detention, the rights of persons belonging to minorities and the protection against arbitrary arrest or detention, and protection against torture and other cruel, inhuman or degrading treatment or punishment.

We wish to recall that the prohibition of torture under article 5 of UDHR is universally binding, absolute and may not be derogated under any circumstance. It is a peremptory norm that your Excellency's Government has accepted by also ratifying the Convention against Torture (CAT) on 3 March 1987, and it includes also timely and appropriate healthcare and medical treatment while in detention. The Committee against Torture has considered the right to be subjected to an independent medical examination as a fundamental legal safeguard from the moment of deprivation of liberty. Prisoners should be able to have prompt access to an independent doctor at any time when requested by them, without conditioning such access on the permission or request of officials and irrespective of their detention regime. Access to timely and appropriate healthcare and medical treatment, including psychosocial services, are of particular importance in the context of complaints and allegations of torture or ill-treatment, for the purpose of assessing, documenting and promptly reporting on injuries or other health related consequences stemming from torture or ill-treatment (CAT/C/51/4).

Moreover, we would like to refer to article 9 ICCPR enshrining the right to liberty and security of person and establishing in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. Article 9 (4) also entitles everyone detained to challenge the legality of such detention before a judicial authority. In its General Comment No 35, the Human Rights Committee has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22) and freedom of religion (art. 18). It has also stated that arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is also in principle arbitrary. In this context, we would like to remind that the detention of Jehovah's Witnesses in the Russian Federation has recently been the subject of analysis

by the Working Group on Arbitrary Detention (see A/HRC/WGAD/2020/10), which found that the detention on that case was discriminatory on the basis of religion and therefore arbitrary.

In addition, Article 6 of the ICCPR imposes obligations on States to particularly protect the lives and bodily integrity of individuals deprived of their liberty, including through the provision of the necessary medical care and appropriate regular monitoring of their health (Human Rights Committee, in its General Comment No. 36 (CCPR/C/GC/36)). Moreover, under Article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Russia on 16 October 1973, States also have an obligation to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to health services.

We would like to further refer to the United Nations Standard Minimum Rules for the Treatment of Prisoners (“the Mandela Rules”), adopted in General Assembly resolution 790/175, and in particular to Rules 24 to 35 regarding States responsibility to provide health care for prisoners, including access to medication and treatment facilities, and examinations for signs of torture. We would like to remind that Rule 3 stipulates that the prison system shall not aggravate the suffering inherent to deprivation of liberty. Rule 27 in particular establishes that clinical decisions may only be taken by health-care professionals and may not be overruled or ignored by non-medical prison staff.

The right of the Jehovah’s Witnesses to religious practices and manifestations is provided by article 18 (1) of the ICCPR that stresses “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” Human Rights Committee General Comment No. 22 further explains that “[t]he freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship [...] the display of symbols [...] In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.” (CCPR/C/21/Rev.1/Add.4, para. 4).

In addition, we wish also to recall that while the manifestation of religion or belief may be restricted as per Article 18(3) of the ICCPR, to protect public safety, order, health, morals and the fundamental rights and freedoms of others, any such limitation must fulfil a number of obligatory criteria of legality, proportionality and necessity, including being non-discriminatory in intent or effect and constitute the least restrictive measure.

We moreover refer to article 19 of the ICCPR, which guarantees the right of everyone to freedom of opinion and expression, which includes “freedom to seek, receive

and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

In its General Comment No. 34 on the right to freedom of opinion and expression, the Human Rights Committee has found that restrictions of the right to freedom of opinion and expression that a government seeks to justify on grounds of national security and counter-terrorism should adhere to the principle of proportionality and necessity, be designed and implemented in a way that respects the universality of human rights and the principle of non-discrimination, and should never be used to prosecute human rights defenders (CCPR/C/GC/34).

We would also like to refer to Human Rights Council resolution 24/5 in which the Council “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 of 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” (OP2, emphasis added).

We would like to respectfully remind your Government of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55), which in its Article 2 (1): “[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief.” In Article 4 (1), the General Assembly further states that: “All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]” Furthermore, we would like to refer your Government to Article 4(2) according to which: “All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter. According articles 6 (d) and (e), the right to freedom of thought, conscience, religion or belief includes also the freedom “to write, issue and disseminate relevant publications in these areas”, and the freedom “to teach a religion or belief in places suitable for these purposes” and read in conjunction with the principles contained in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4), any statement or expressed opinion should fulfil the six part threshold test of context, content and form, speaker, intent, extent of the speech act, and likelihood/imminence, in order to be considered as a criminal offence.

Furthermore, we would like to recall that the General Assembly, in its resolution 63/181 paragraph 9 (j) urges States “To ensure that all public officials and civil servants, including members of law enforcement bodies, the military and educators, in the course of fulfilling their official duties, respect all religions or beliefs and do not discriminate for

reasons based on religion or belief, and that all necessary and appropriate education or training is provided.”

With respect to the use to counter terrorism and extremism justifications to restrict the legitimate exercise of freedom of expression, we would like to underline that any restriction on expression or information that a government seeks to justify on grounds of national security and counter terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that counter terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and freedom of peaceful association and assembly. These rights are protected under ICCPR and non-violent exercise of these rights is not a criminal offence. Counter terrorism legislation should not be used as an excuse to suppress peaceful minority groups and their members. We consequently urge the government to maintain a definition of extremism and terrorism consistent with the core legal meanings adopted by States and commends the definition of terrorism developed by the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for your consideration (A/HRC/16/51).

We also recall 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.

Furthermore, Article 27 of the ICCPR establishes that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities have the right, in community with the other members of their group, “to enjoy their own culture, to profess and practice their own religion, or to use their own language”.

We wish to refer to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted in General Assembly resolution 47/135, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them.

Finally, we remind your Excellency's Government about recommendations addressed to the Russian Federation during its UN Universal Periodic Review from 14 May 2018, which notably urged your Government to refrain from outlawing religious groups, including Jehovah's Witnesses as "extremist" (recommendations no. 147.199; 147.200; 147.201; 147.202; 147.203; and 147.204)