

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
AL RUS 4/2021

2 March 2021

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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; and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 42/22, 44/5, 43/4, 41/12 and 44/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **arrest, trial, and continued imprisonment of Mr. Alexei Anatolievich Navalny (Mr. Navalny)** since his return to the **Russian Federation (Russia) in January 2021, which seem to have been arbitrarily and punitively employed against him in retaliation for his legitimate political and anti-corruption activities, despite rulings of the European Court of Human Rights (ECHR) in relation to Mr. Navalny's case, including a recent interim measure calling for his release.**

Mr. Navalny is a Russian politician, lawyer, and an anti-corruption activist, and a prominent figure in the political opposition. He was previously the subject of four communications issued by United Nations Special Procedures: RUS 2/2021, RUS 11/2020, RUS 7/2020 and RUS 4/2012. We appreciate the reply to RUS 7/2020, received on 26 October 2020, which is related to an alleged attempt against his life in August 2020. We remain deeply concerned about his case, particularly in light of new allegations received and detailed below.

According to the information received:

Background information

At the beginning of 2012, as part of his broader anti-corruption activism, Mr. Navalny reportedly investigated the alleged off-duty financial activities of the chief of the Investigative Committee of the Russian Federation ("the Investigative Committee).

In early December 2012 the Investigative Committee opened a criminal file on suspicion that Mr. Navalny had committed fraud against the limited liability companies Multidisciplinary Processing and Yves Rocher Vostok and laundered the proceeds of illegal transactions. On 20 December 2012 charges of fraud and money laundering were brought against Mr. Navalny, under articles 159.4 and 174.1 § 2 (a) and (b) of Russia's Criminal Code. On 28

February 2014, Mr. Navalny appears to have been placed under house arrest.¹

On 30 December 2014, Mr. Navalny was convicted of money laundering and of defrauding the two above-mentioned companies. He was given a suspended sentence of three and a half years. As a result of this suspension, Mr. Navalny was placed on a five-year probationary period. This probation period entailed a number of parole obligations which included regular appearances, at least twice a month, before the Penal Enforcement Inspectorate.²

On 4 August 2017, Mr. Navalny's probation period appears to have been extended until the end of December 2020. Repeated parole violations and administrative offences, reportedly due to participation in unsanctioned protests, were said to have been cited by the court as justification.

On 17 October 2017, the European Court of Human Rights (ECtHR) found the 30 December 2014 judgment against Mr. Navalny to constitute a violation of articles 6 (fair trial) and 7 (no punishment without law) of the European Convention on Human Rights (ECHR). The Court held that the criminal provision was "extensively and unforeseeably construed to [Mr. Navalny's] detriment", essentially concluding that the acts imputed to the applicant were indistinguishable from regular commercial activities. It further held that the proceedings against him were "arbitrary and manifestly unreasonable" and "extensively and unforeseeably construed".³

On 25 April 2018, the Russian Supreme Court examined a reopening request for the 2014 judgment against Mr. Navalny and left the conviction standing. No further follow-up has been reported by the Russian government in relation to the 2017 judgment of the ECtHR.⁴

During this period, Mr. Navalny reportedly faced a number of other criminal charges and proceedings, such as the so-called "Kirovles case" and several criminal cases relating to Mr. Navalny's alleged participation in various public protests.⁵ Nevertheless, Mr. Navalny continued his public campaigning against corruption and became an increasingly high-profile figure in the political opposition.

Alleged poisoning of Mr. Navalny

On 20 August 2020, on a flight from Tomsk to Moscow, Mr. Navalny was allegedly subjected to an attempted killing through exposure to a prohibited nerve agent, *Novichok*. Mr. Navalny survived due to an emergency landing and emergency medical care in Omsk, which included prompt intubation and

¹ The court that imposed this house arrest decision cited Mr. Navalny's criminal record in relation to other criminal cases (such as the so-called "Kirovles case") and convictions for administrative offences, such as public gathering violations, as partial justification for this decision.

² General Prosecutor's Office of the Russian Federation - 1 February 2021 Statement <https://epp.genproc.gov.ru/web/gprf/mass-media/news?item=58370818>

³ –ECtHR, *Navalnyy v. Russia*, app. no. 101/15, judgment of 17 October 2017.

⁴ <https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%5B%22004-13537%22%7D>

⁵ See: ECtHR, *Navalnyy v. Russia*, app. no. 29589/12 and 4 others, judgment of 15 October 2018. See also ECtHR, *Navalnyy and Gunko v. Russia*, app. no. 75186/12, Judgment of 10 November 2020.

mechanical ventilation.

On 22 August, Mr. Navalny, who was in an induced coma, was flown to Berlin for specialized treatment. Medical tests conducted while he was in a German clinic indicated that he had likely been exposed to *Novichok*, due to the nature of his symptoms and responses to specific treatments.

Mr. Navalny would spend around five months in Germany recuperating. During this time, he reportedly produced various social media posts, including videos on his widely-followed *Youtube* page in which he exposed details which purportedly implicated Federal Security Service agents in the alleged attempt against his life. The Russian Government denied these allegations.

Alleged parole violations

On 28 December 2020, a day before Mr. Navalny's probation period was expected to end, the Federal Penitentiary Service (FPS) issued a public statement indicating that he had not met his parole obligations at least since October 2020 and, if confirmed, he would be held criminally liable.⁶ The FPS statement also noted that Mr. Navalny and his legal team had been informed of this. It seems that Mr. Navalny had been placed on a wanted list by order of the FPS by the following day.⁷

Although it appears that Mr. Navalny's parole obligations had been temporarily lifted while he was in intensive care in Russia and later in Germany, the FPS claimed that Mr. Navalny had stopped experiencing symptoms on 12 October, and had been discharged from full-time medical supervision at the Berlin clinic before then. As a result, they maintained that Mr. Navalny had not only failed to fulfil his parole obligations but had "evaded the control of the FPS".⁸ It appears that the FPS had ascertained that Mr. Navalny had stopped experiencing symptoms on October 12, due to information included in a December issue of *The Lancet*, whose other findings regarding the use of the *Novichok* substance appear to have been rejected as relevant evidence by high-ranking Government ministers.

Mr. Navalny and his legal representatives have claimed that they sent a notice to the penitentiary authorities informing them about his whereabouts in early December 2020.

Legal proceedings in relation Mr. Navalny's alleged parole violations and related restrictions to the rights to freedom of expression and peaceful assembly

On 17 January 2021, Mr. Navalny returned to Russia. His flight was reportedly meant to land in Vnukovo airport but was diverted, ostensibly to stop him from meeting with a group of his supporters who had gathered there.

⁶ Russia's Federal Penitentiary Service Statement - 28 December 2020.

https://77.fsin.gov.ru/news/detail.php?ELEMENT_ID=537349

⁷ General Prosecutor's Office of the Russian Federation - 1 February 2021 Statement

<https://epp.genproc.gov.ru/web/gprf/mass-media/news?item=58370818>

⁸ Russia's Federal Penitentiary Service Statement - 28 December 2020.

https://77.fsin.gov.ru/news/detail.php?ELEMENT_ID=537349

Shortly after he had entered Moscow's Sheremetyevo airport, Mr. Navalny was handcuffed and detained by police officers as he was on a wanted list due to his alleged parole violations. One of Mr. Navalny's legal representatives has claimed that she was immediately cut off from her client at the airport. Mr. Navalny was reportedly subsequently taken to a police station on the outskirts of Moscow where he was held overnight. While there, he had no access to his lawyers, for possibly up to 15 hours, despite repeated requests by both his lawyers and Mr. Navalny himself.

The following day, instead of taking Mr. Navalny to a court building, the authorities brought a judge to the police station for an extraordinary hearing. Mr. Navalny's legal representatives were only informed of this hearing shortly, and possibly only minutes, before it began. At the end of the hearing, the judge authorized Mr. Navalny's pre-trial detention for 30 days, during which time his suspended sentence could be replaced by prison time.

While this trial was taking place, Mr. Navalny posted a video online, in which he detailed and criticised the legal proceedings against him. He also called for mass protests to be organised across Russia on 23 January.

On 19 January, Mr. Navalny's anti-corruption foundation made public a video investigation titled "Putin's Palace" that had been filmed before Mr. Navalny's return to Russia, which contained allegations relating to high-level corruption. This video had reportedly been watched 100 million times on *Youtube* alone by 29 January.

On 20 and 21 January, the State body for media oversight, issued warnings and threatened fines to social media platforms, indicating that they were obliged to take down content that called on underage persons to participate in protests. On 27 January, it appears to have announced specific fines for seven social media companies, including *YouTube*. On 1 February, a law entered into force, which reportedly obliges social media networks to take down content deemed illegal under the Russian law.⁹

On 2 February, a Moscow Court ruled that Mr. Navalny had violated the terms of his probation in relation to the 2014 fraud case and sentenced him to three and a half years in prison.

In his statement in court, Mr. Navalny, who had been in a glass cage during his trial, condemned the proceedings as unlawful, noting that he had reported to probation officers twice a month for the past five years, in full compliance with the rules of his probation. His legal representatives also reiterated that they had sent a notification of his whereabouts to the penitentiary authorities in early December 2020 and claimed that they had called the FPS earlier on, but no one had answered or returned these calls. They also appear to have presented a letter from the Berlin clinic that indicated that Mr. Navalny had been undergoing rehabilitation until his return to Russia.

The ruling was preceded and followed by several weeks of nationwide protests, which reportedly led to record numbers of detentions of peaceful

⁹ <http://publication.pravo.gov.ru/Document/View/0001202012300062>

protesters and widespread allegations of police brutality. The largest protests seem to have taken place on 23 January, the day Mr. Navalny had mentioned in his police station trial.¹⁰ However, other notable large-scale protests took place on 17, 18 and 31 January and on 2 and 14 February.¹¹ According to some sources, in total across these dates, around 11000 people who had participated in these protests were detained.

ECtHR interim measures

On 20 January 2021, Mr. Navalny requested interim measures by the ECtHR. As a matter of procedure, the ECtHR requested information from the Russian Government regarding measures that had been undertaken to safeguard Mr. Navalny's life and well-being while in custody, as well as whether the conditions of his detention, including regular independent monitoring thereof, were in line with ECtHR standards.

On 26 January 2021, the Russian Government had replied to the ECtHR's request, stating that the applicant was being held in a guarded facility and that his cell was under video surveillance. They described the material conditions in the cell and stated that the applicant had access to electronic communications via the prison system. He had also been allowed to make phone calls and had been visited by his lawyers and the public monitoring commission on several occasions.¹²

On 3 February 2021, Mr. Navalny submitted his comments in response to the Russian's Government's reply to the ECtHR request. Mr. Navalny reportedly expressed concern that the arrangements listed by the Government could not provide sufficient safeguards for his life and health.

On 16 February 2021, the ECtHR issued interim measures with respect to Mr. Navalny under Rule 39 of the Rules of Court, ordering the immediate release of Mr. Navalny's in light the "nature and extent" of the "demonstrated" risks to his life and the circumstances of his detention.

Re-examination on appeal

On 20 February 2021, a Moscow court upheld Mr. Navalny's prison sentence relating to the 2014 fraud conviction in an appeal hearing, but reduced the sentence by around 50 days considering time already served by Mr. Navalny under house arrest in 2014.

In his statement at court, Mr. Navalny indicated that he had been unable to physically report to the penitentiary service due to the fact that he was recovering from his alleged poisoning, while noting that the "whole world knew" where he was located. He also referred to the interim measure issued by the ECtHR on 16 February demanding his immediate release.

¹⁰ See RUS 2/2021.

¹¹ These dates coincide with several events mentioned above: the return of Mr. Navalny to Russia, his detention at the Sheremetyevo airport, the out-of-court hearing at a police station, as well as the 2 February ruling.

¹² European Court of Human Rights Press release 17.02.2021 - ECHR 063 (2021).

Separate defamation proceedings

Later on the same day, Mr. Navalny appeared in court again for a separate trial on a charge of defamation against a Second World War veteran. These separate allegations stem from a video aired in June 2020 about a vote on a constitutional amendment that would enable the current President to remain in office until 2036. The video is said to have contained statements by various individuals, including the said Second World War veteran as well several celebrities, expressing support for this amendment. Mr. Navalny had reportedly tweeted that the video's participants were "traitors" and "corrupt lackeys". Russia's Investigative Committee subsequently indicated that the comments contained deliberately false information denigrating the "honour and dignity" of the veteran. Mr. Navalny was ultimately found guilty and appears to have been fined 850,000 RUB.

Alleged transfer from Moscow prison

As of 26 February, it appears that Mr. Navalny had been moved from the remand prison in Moscow where he was being held and sent to an unknown location. It has been alleged that one of Mr. Navalny's lawyers visited the remand prison to speak to his client only to find out that he was no longer there. Prison authorities were seemingly unable to provide information about where he had been taken, although it is reportedly likely that he has been transferred to a penal colony.

While we do not wish to prejudge the accuracy of these allegations, we express our deep concern at what appears to be an orchestrated and systematic effort to make Mr. Navalny cease his political and anti-corruption activities and to coerce him into disappearing from the public scene in Russia.

We have previously expressed concerns that the alleged violations and restrictions on the rights of Mr. Navalny have been taken with such purposes, contrary to the principles of democracy and the rule of law. These concerns were detailed recently in our previous communication on the failed attempt on Mr. Navalny's life (RUS 7/2020), which was itself preceded by repeated findings by the ECtHR of human rights violations suffered by Mr. Navalny.

Beyond our previously expressed concerns, we refer to the lack of a reasonable justification on the part of the penitentiary authorities to place him on a wanted list while he was recovering in Germany. We note that Mr. Navalny's parole obligations, the decision of 28/29 December 2020 to place him on a wanted list for allegedly having missed these obligations, and his sentencing upon his return to Russia were taken on the basis of a 2014 sentence found to be unlawful under the ECHR. As such, there would be no recognised legal basis for the restrictions imposed on Mr. Navalny on 18 January and 2 February 2021, and upheld in the 20 February appeal hearing. If confirmed, these judicial proceedings and subsequent verdicts would be contrary to his rights to personal liberty, fair trial, and the principle of legality under Articles 9, 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973. Moreover, in light of the credible evidence of risk to Mr. Navalny's life, the disregard for the interim measure issued by the ECtHR on 16 February 2021 could entail violations of his right to life under article 6 of the ICCPR. In addition, placing Mr.

February 2021, and to take urgent action to remedy any ongoing violation of Mr. Navalny's rights brought about by the sentencing on 2 February 2021, and upheld in his 20 February appeal hearing, the sentence for defamation on 20 February 2021, and to take general measures necessary to prevent the recurrence of any violations, in accordance with the obligations of the Russian Federation under article 2 (1) in conjunction with 2 (3) of the ICCPR.

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 any comment you may have on the abovementioned allegations.
2. Please provide information on the legal and factual basis for the arrest, detention, and eventual imprisonment of Mr. Navalny since his return to Russia in 2021, and how these are compatible with your Excellency's Government's international human rights obligations under the ICCPR and the ECHR in particular.
3. Please provide information about measures taken to comply with the ECtHR's 16 February 2021 interim measure ordering Mr. Navalny's release.
4. Please also confirm whether or not Mr. Navalny has had regular and confidential access to a lawyer throughout his detention and trial since his return to Russia on 17 January 2021 and whether his legal representatives have been provided with adequate time and facilities for the preparation of his defence, particularly on 18 January, and have been able to fully participate in all legal proceedings Mr. Navalny has faced in accordance with article 14 of the ICCPR and article 6 of the ECHR.
5. Please provide further information about the separate defamation case against Mr. Navalny, and how it is compatible with international human rights law related to freedom of expression, in particular with article 19 (3) of the ICCPR.
6. Please provide information about how regulatory orders to take down content on Internet platforms comply with your obligations under international human rights law related to freedom of expression, in particular with article 19 (3) of the ICCPR.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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.

We may 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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter 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 letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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, 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 described above. In particular we would like to remind your Excellency's Government of its obligations under the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973.

Firstly, we refer to **Article 6(1) of the ICCPR which provides that every individual has the right to life** and that no person shall be arbitrarily deprived of his or her life. In General Comment No. 6, the Human Rights Committee reiterated that the right to life is the supreme right from which no derogation is permitted. The right to life has two components. The first and material component is that every person has a right to be free from the arbitrary deprivation of life. The second and more procedural component is the requirement of proper investigation and accountability wherever there is reason to believe that an arbitrary deprivation of life may have taken place.¹⁷ We recall that international jurisprudence has emphasised that the prohibition against arbitrary deprivation of life may come into play even if a person whose right to life was allegedly breached did not die.¹⁸ In particular, under the European Convention, a use of force by State agents which does not result in death may disclose a violation of the right to life, if the behaviour of the State agents, by its very nature, puts the applicant's life at serious risk even though the latter survives.¹⁹

We note that ECHR has also interpreted the protection of the right to life as imposing a duty on Government authorities "to take appropriate steps to safeguard the lives of those within its jurisdiction" and "to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual."²⁰ This principle has been translated to require authorities to take all reasonable measures to avoid a real and immediate risk to life of which they had or ought to have knowledge, a question which could only be answered in the light of all the circumstances of any particular case. Applied generally, the duty to protect the right to life "requires States parties to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence (GC 36, para. 23).

The duty to respect and ensure the rights of the Covenant entails a positive obligation to prevent attacks by all actors, including non-State actors (CCPR/C/21/Rev.1/Add.13). In its General Comment No. 31, the Human Rights Committee stated that there is a positive obligation on States to ensure the protection of the rights contained in the Covenant against violations by private persons or entities, which includes the duty to take appropriate measures to prevent, investigate, prosecute and punish those responsible and repair the damage caused by private persons or entities (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18). A failure to investigate and bring perpetrators of such violations to justice could in and of itself

¹⁷ A/HRC/41/CRP.1, para. 194.

¹⁸ GC 36

¹⁹ *Makaratzis v. Greece* [GC], § 55; *Soare and Others v. Romania*, §§ 108-109; *Trévalec v. Belgium*, §§ 55-61

²⁰ *Osman v. The United Kingdom*, ECHR Case No. 87/1997.871/108 (1998) at 32-33.

give rise to a separate breach of the ICCPR.

Second, we would also like to remind your Excellency's Government that **Article 19(3) of the ICCPR, relating to the right to freedom of opinion and expression**, includes "the right to seek, receive and impart information and ideas of all kind, regardless of frontiers" and in any form of media. Article 19 requires that any restriction on the right to freedom of expression (i) is provided by law; (ii) serves a legitimate purpose; and (iii) is necessary and proportional to meet the ends it seeks to serve. In this connection, we also wish to recall the principle enunciated in Human Rights Council Resolution 12/16. The Resolution calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups. We also underline that permissible restrictions on the internet are the same as those offline (A/HRC/17/27).

The Human Rights Committee stated that article 19(3) could never be invoked as a justification for muzzling advocacy of multiparty democracy, democratic tenets or human rights, nor, in any circumstance, could an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19.²¹ Together with the freedom of opinion, the right to freedom of expression is a prerequisite for every free and democratic society. The Human Rights Committee has affirmed that the free communication of information and ideas about public and political issues is essential, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.²²

Thirdly, we would also like to refer to the **right not to be arbitrarily deprived of liberty and to fair proceedings before an independent and impartial tribunal, as set forth in articles 9 and 14 of the ICCPR**. We wish to highlight that deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by the ICCPR is considered arbitrary.²³ Article 9 establishes 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, and that anyone who is arrested shall be informed, at the time of arrest, of the reasons behind such arrest and be brought promptly before a judge for the purpose of legal assessment of detention. We further note that a person may only be deprived of his/her liberty in accordance with national laws and procedural safeguards governing detention, and where the detention is not otherwise arbitrary.

We would also like to refer your Excellency's Government to article 9 (3) of the ICCPR, whereby anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. Pre-trial detention should thus be the exception rather than the rule, and it should be based on

²¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/153/19/PDF/G1315319.pdf?OpenElement>

²² HRC, General Comment no. 25; see also *id.* para. 20.

²³ HRC, General Comment no. 35, para. 17 as well as the jurisprudence of the Working Group on Arbitrary Detention.

an individualized determination that it is reasonable and necessary to detain an individual, taking into account all the circumstances.²⁴ In addition, article 9 (4) of the ICCPR provides that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.²⁵

We further recall that article 14 of the ICCPR provides that in the determination of any criminal charge, everyone shall be entitled to the minimum guarantees of fair trial and due process, including to have adequate time and facilities for the preparation of his defence, to be assisted by and to communicate with a lawyer of his own choosing, as also established by the UN Basic Principles on the Role of Lawyers. In this respect, we would like to refer your Excellency's Government to the recent report of the Working Group on Arbitrary Detention to the Human Rights Council (A/HRC/45/16, paras. 50-55), where the Working Group reiterated that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty. The Working Group also highlighted that the right to legal assistance applies from the moment of deprivation of liberty, and that it should be available at all stages of criminal proceedings, namely, during pretrial, trial, re-trial and appellate stages, to ensure compliance with fair trial guarantees.

Fourth, we recall that the ICCPR guarantees **the rights to freedom of peaceful assembly and of association in its articles 21 and 22**. These rights can be subject to certain restrictions in strict conditions of necessity and proportionality only. In this regard, we would like to refer to Human Rights Council Resolution 24/5 which "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". With regard to the de facto prior authorization to hold assemblies, we recall that the exercise of fundamental freedoms should not be the subject of previous authorization and that the suspension or de-registration of an association constitutes one of the severest types of impediment to the right to associate (A/HRC/20/27, para. 28 and 75). We would like to refer to the recently adopted General Comment No. 37 of the Human Rights Committee on Right of peaceful assembly (CCPR/C/GC/37), which stressed that "the possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not sufficient grounds to prohibit or restrict the assembly. [...] States are obliged to take all reasonable measures that do not impose disproportionate burdens upon them to protect all participants and to allow such assemblies to take place in an uninterrupted manner".

Fifth, we further note that **article 7 of the ICCPR mandates that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment."** Under the ICCPR, as well as the European Convention, this prohibition is non-derogable (ICCPR, article 4(2), ECHR, article 15(2)). The Convention against Torture likewise prohibits torture, which it defines as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as ... intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is

²⁴ Ibid, para. 38.

²⁵ See the UN Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37).

inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” (article 1, para. 1).

In addition, Mr. Navalny’s subsequent punishment and eventual imprisonment for missing his parole violations when he was recuperating from the effects of this substance, which appear to have been used as a form of intimidation and coercion, may also amount to inhuman or degrading treatment and punishment.

Lastly, we would also like to remind your Excellency’s Government of its obligations under **article 25 of the ICCPR, which protects the right of every citizen to “take part in the conduct of public affairs**, directly or through freely chosen representatives.” The Human Rights Committee has observed that citizens “take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives.” The Human Rights Committee has also observed that voters should be “free to support or oppose their government” and “should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.” (General Comment No. 25 from the Human Rights Committee) In this regard, we would like to refer to Human Rights Council Resolution 24/5 which “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”.