

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL RUS 7/2021

9 June 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/16, 42/22, 43/4, 41/12, 44/8 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the **arrest and alleged arbitrary detention, torture and ill-treatment, of journalist and human rights defender Mr. Vladyslav Yesypenko** in Crimea.¹

Mr. Vladyslav Yesypenko is a human rights defender and freelance journalist. Since 2017, he has been contributing to the media project "Crimea.Realities" with Radio Free Europe / Radio Liberty (RFE/RL), a regional news outlet which covers the social, political and human rights situation in Russia-annexed Crimea.

According to the information received:

On 9 March 2021, Mr. Vladyslav Yesypenko covered a peaceful demonstration, together with other members of the press, in the city of Simferopol, on the occasion of a Ukrainian poet's birthday.

On the afternoon of 10 March 2021, Mr. Yesypenko was detained by members of the Federal Security Bureau (FSB) of the Russian Federation. Allegedly, no warrant was presented to him at the time of his arrest. It is reported that a warrant was instead drawn up the following day, 11 March, at 10pm.

On 12 March 2021, Mr. Yesypenko was ordered to remain in detention for two months by the Kievsky District Court of Simferopol. He was charged with "illegal manufacture of an explosive device", which carries a minimum sentence of six years, and "espionage" which carries a sentence of up to 20 years upon conviction. Mr. Yesypenko was originally not allowed to be represented by his own lawyers and was instead assigned one.

¹ References to Crimea should be read in accordance with General Assembly resolution 68/262, in which the General Assembly affirmed its commitment "to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognised borders" (para. 1).

During the two days after his arrest, Mr. Yesypenko was allegedly tortured using electroshocks. An object was reportedly placed on his head, connected to wires, through which an electric current was transmitted, gradually increasing in voltage. According to the information received, Mr. Yesypenko was coerced under torture to testify that he had transported an explosive device in his car and had spied for the Foreign Intelligence Service of Ukraine by taking photos and recording videos of public infrastructure and places of public gatherings in Crimea and sending them to both the intelligence agency and RFE/RL's "Crimea.Realities" project. He was again coerced to make the same claims during an interview on the television channel Krym24, which was aired on 18 March 2021.

On 5 April 2021, an FSB officer reportedly threatened Mr. Yesypenko with physical harm if he chose to be represented by his own lawyers instead of the lawyer that had been appointed by the court during his first hearing session in the Supreme Court of Crimea.

At the hearing, on 6 April 2021, Mr. Vladislav Yesypenko decided to meet with his own lawyers and stated that his original confession of guilt had been obtained under torture, by electro-shocks and beatings on the legs, genital area and upper body. The court ordered Mr. Yesypenko's to remain in detention until 11 May, pending investigation.

Since alleging that his confession was obtained under torture, FSB officers have reportedly threatened to kill Mr. Yesypenko on a number of occasions. An investigation into the torture allegations has reportedly been ordered, but it is unclear at the time of writing what stage these investigations are at.

On 12 April 2021 after meeting with his lawyers in SIZO No.1 pre-trial detention centre in Simferopol, Mr. Yesypenko was called into the office next door to speak with an FSB officer. The officer reportedly threatened Mr. Yesypenko with physical violence and death if he shared further information that conflicted with his testimony taken under torture.

On 13 April 2021, an FSB officer who was accompanying Mr. Yesypenko on the way to the FSB building for investigative actions, allegedly threatened that he would kill Mr. Yesypenko if he changed his testimony. Upon arrival at the investigation questioning, Mr. Yesypenko explained that his original testimony had been given under torture and he stood by the testimony given at the Supreme Court. Mr. Yesypenko's lawyers have requested the military-investigative department of the Investigative Committee in Crimea to launch an investigation into the FSB officers who threatened him.

On 30 April 2021, the Kievsky District Court of Simferopol extended Mr. Yesypenko's pre-detention until 11 July 2021.

Without prejudging the accuracy of the information received, we express our most serious concern as to the aforementioned arrest, detention, alleged torture and criminal accusations brought against Mr. Yesypenko, which appear to have been made in retaliation for his journalistic and human rights work. Should these allegations be

confirmed, they would be in violation of articles 9, 14 and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973, which guarantees the rights not to be arbitrarily deprived of liberty, to fair proceedings before an independent and impartial tribunal and to freedom of opinion and expression; as well as articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) ratified on 3 March 1987.

We are issuing this appeal in order to safeguard the rights of Mr. Yesypenko from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*².

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 above-mentioned allegations.
2. Please provide the details and, where available, the results of any investigation and judicial or other inquiries which may have been carried out, or which are foreseen, into the allegations of torture and other cruel, inhuman or degrading treatment or punishment alleged to have been inflicted upon Mr. Yesypenko. If no such enquiries have been conducted, please explain why, and how this is compatible with the Russian Federation's obligation under international human rights law.
3. Please provide detailed information on the judicial and administrative measures in place for the purpose of preventing torture and other cruel, inhuman or degrading treatment or punishment, as well as mechanisms ensuring the prompt, independent, and thorough investigation of allegations of torture, and if confirmed, prosecuting perpetrators, areas anywhere under the jurisdiction or control of your Excellency's Government.
4. Please provide information about the factual and legal basis for the arrest and detention of Mr. Yesypenko and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR. Please explain the reasons as to why no warrant was presented at the time of his arrest and why he was initially not permitted representation from the lawyers of his choosing.

² Article 41 ICJ Statute 'Interim Protection': Part III, Section D (Incidental Proceedings), Subsection 1.

5. Please provide details of any investigation launched into the alleged threats made against Mr. Yesypenko from FSB officers. If no investigation is underway, please explain why.
6. Please indicate what measures have been taken to ensure that journalists and human rights defenders are able to carry out their legitimate work, including through the exercise of their right to freedom of opinion and expression in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort against either themselves or their families.

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 would like to inform your Excellency's Government that after having transmitted a joint communication 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 joint communication and the regular procedure.

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.

In accordance with General Assembly resolution 68/262 on the territorial integrity of Ukraine, and taking into account General Assembly resolutions 71/205, 72/190, 73/263 and 74/168 on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, I 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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

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

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

While we do not wish to prejudge the accuracy of the abovementioned allegations, we refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR) ratified by the Russian Federation on 16 October 1973.

As to the law applicable to the territory occupied by the Russian Federation in Crimea, we refer to the general obligations under international humanitarian law, expressed in 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"). Moreover, in accordance with article 2(1) of the ICCPR, the scope of application of the Covenant extends beyond the State's own territory to all areas within the State's "jurisdiction". As authoritatively affirmed by the Human Rights Committee, jurisdiction is exercised for example where the State exercises power over an individual or has effective control over territory, such as in situations of occupation. Consequently, the Russian Federation, as an occupying power over Crimea, is under an obligation to respect and ensure the rights under the Covenant (see Human Rights Committee General Comments nos. 31, para. 11, and 36, para. 63)

Article 19 of the ICCPR protects, inter alia, political discourse, commentary on one's own and on public affairs, discussion on human rights and journalism (Human Rights Committee, General Comment no. 34, CCPR/C/GC/34 para 11). As indicated by the Human Rights Committee, "the function of journalists includes not only full-time reporters and analysts, but also bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere", CCPR/C/GC/34 para. 44. While all restrictions must comply with the requirements of necessity and proportionality, the penalisation of a journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression, CCPR/C/GC/34 para 42. Furthermore, Human Rights Committee, in its General Comment No. 35 paragraph 53 has stated that detention purely due to peaceful exercise of rights protected by the Covenant may be arbitrary. Laws justified by national security, whether described by sedition laws or otherwise, can never be invoked to prosecute journalists, see CCPR/C/GC/34 para 30. Likewise, the arbitrary arrest or torture of individuals because of the exercise of their freedom of expression will under no circumstance be compatible with Article 19, CCPR/C/GC/34 para. 23.

We also make reference to resolution 12/16 of the Human Rights Council, which calls upon States to investigate effectively threats and acts of violence, including terrorist acts, against journalists, and to bring to justice those responsible to combat impunity. In this regard, we would like to refer to the Human Rights Council resolution 45/18 on safety of journalists adopted on 6 October 2020, in which the Council called upon States to ensure accountability through the conduct of investigations into all alleged violence, threats and attacks against journalists and media workers falling within their jurisdiction.

We would like to refer your Excellency's Government to article 9(1) of the ICCPR whereby everyone has the right to liberty and security, and no person should be the subject of arbitrary arrest or detention. In this respect, we wish to emphasize that the prohibition of arbitrary deprivation of liberty is absolute and universal.³ We also recall that according to article 14 (1) of the ICCPR, all individuals are equal before the law, and everyone has the right to a fair, free and public trial before an independent and impartial tribunal.

As stated by the Human Rights Committee, the deprivation of liberty of an individual for exercising their freedom of expression constitutes an arbitrary deprivation of liberty contrary to Article 9 of the Covenant, see CCPR/C/GC/35 para. 17, and a concurrent violation of Article 19.⁴ This has also been confirmed by the Working Group on Arbitrary Detention in its jurisprudence. Such attacks against individuals for exercising their rights to freedom of expression should be "vigorously investigated in a timely fashion, and the perpetrators prosecuted", CCPR/C/GC/34 para. 23.

Concerning information that Mr Yesypenko may have been arrested, detained and criminally charged in relation to his journalist work, we recall that States have a responsibility not only to respect journalism but also to ensure that journalists and their sources have protection through strong laws, prosecutions of perpetrators and ample security where necessary (A/HRC/71/373 para. 35). It has indeed long been recognised that "journalism constitutes a necessary service for any society, as it provides individuals and society as a whole with the necessary information to allow them to develop their own thoughts and to freely draw their own conclusions and opinions" (A/HRC/20/17 para 3).

We would further like to draw the attention of your Excellency's Government to article 6 of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), which was ratified by the Russian Federation on 3 March 1987, which requires the State Parties to establish their jurisdiction over acts of torture if they are committed in any territory under its jurisdictions; when the alleged offender is a national of that State and when the victim is a national of that State if that State considers it appropriate. It also requires State Parties to establish their jurisdiction over acts of torture in cases here the alleged offender is present in their territory. Article 7 goes on to provide that State Parties must either extradite alleged offenders or submit the case to its competent authorities for the purpose of prosecution.

We would like to further refer to paragraph a of Human Rights Council Resolution 16/23, which reminds States that "(i)ntimidation and coercion, as described in article 1 of the CAT, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment".

We would like to furthermore draw the attention of your Excellency's Government to the obligation to effectively investigate allegations of torture as

³ See A/HRC/22/44, paras. 42-43 and Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 66.

⁴ See also Human Rights Committee, general comment No. 37 (2020) on the right of peaceful assembly.

expressed in paragraph 7b of Human Rights Council Resolution 16/23, which urges States “(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”

We would like to 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;-and 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.