

Mandates of the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on the situation of human rights defenders

Ref.: AL RUS 12/2021

(Please use this reference in your reply)

30 November 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 44/8, and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **administrative offences charges and the detention of a Ukrainian lawyer and human rights defender, Mr. Edem Semedliaiev, allegedly as a result of the legitimate exercise of his legal profession**

Mr. Semedliaiev is Crimean Tatar resident of Simferopol, Autonomous Republic of Crimea, Ukraine, temporary occupied by the Russian Federation (hereinafter – Crimea)¹. He is a defense lawyer officially admitted to practice law in the Russian Federation. Mr. Semedliaiev frequently represents Crimean Tatar defendants in high-profile cases in Crimea and the Russian Federation..

According to the information received:

On 25 October 2021, Russian police officers arrested 21 Crimean residents in Simferopol on administrative charges of organizing public assemblies that led to public disorder under Article 20.2.2 of the Russian Federation Code of Administrative Offences and brought them to the police station “Tsentralnuy” (address: Crimea, Futbolistov Street, 20). At approximately 16.00 on the same day, Mr. Semedliaiev, acting in his capacity as a defense lawyer, arrived to the police station in order to provide legal assistance to the arrested individuals.

While carrying out his professional duties as a defense lawyer, at approximately 16.30, Mr. Semedliaiev requested the police officers not to conduct any investigative activities with the arrested individuals without his presence. Following that, while assisting one of his clients during an interrogation, Mr. Semedliaiev noted that the police was attempting to question another one of his clients in his absence. He also allegedly heard the police threatening his client with prosecution for “police disobedience”. In order to document what he believed to be unlawful actions of the police officers, Mr. Semedliaiev started recording his conversation with police officers on his mobile phone. When the police officers noticed this, Mr. Semedliaiev received an order from the head of

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).

the “anti-extremist” police unit, Mr. ██████████, to switch off the audio recorder on his mobile phone. The police officer referred to the “special status” (*«режимный объект»*) of the police premises under Russian law, which in his view, did not allow private individuals to use video/audio recording devices inside police stations without a special permit. Invoking his right under Russian law to use audio recording devices, Mr. Semedliaiev continued audio recording.

Following this, Mr. ██████████ and at least six other police officers brought Mr. Semedliaiev to one of the rooms in the police station and drew up a protocol on administrative offence against him for “police disobedience” under Article 19.3(1) of the Russian Federation Code on Administrative Offences. The protocol contained information *inter alia* that the victim “failed to comply with the order of police officers to stop video and audio recording inside the police station in Simferopol”.

Subsequently, while in the police office, Mr. ██████████ ordered Mr. Semedliaiev to undergo a strip search. Mr. Semedliaiev was ordered to take off all his clothes so that the police officers could examine if “he had any tattoos with Nazi or extremist symbols on his body”. When he refused, stating that the police order was unlawful, Mr. ██████████ charged him with another count of police disobedience under Article 19.3(1) of the Russian Federation Code on Administrative Offences. Mr. Semedliaiev was formally arrested at 18.45 the same day. Reportedly, there is reason to believe that Mr. Semedliaiev had been *de facto* arrested at approximately 16.30, i.e. from the moment when he was no longer at liberty to leave the police station.

At 01.30 of the next day, the Mr. Semedliaiev was brought to the Temporary Detention Facility (*«Изолятор временного содержания»*) in Sudak, Crimea, where he was held until 11.30.

On 26 October 2021, at approximately 13.00, Mr. Semedliaiev was brought to the Tsentralny district court of Simferopol where both cases against him were scheduled for hearing on the merits. At all times inside the courthouse, Mr. Semedliaiev remained under the effective control of police officers who did not allow him to leave the court or walk alone.

On the evening of the same day, Mr. Semedliaiev found out that the court acting *proprio motu* had decided to return both his cases to the police, in view of numerous procedural violations committed by police officers in the course of administrative proceedings. In particular, the judge noted that the police protocol *inter alia* lacked information concerning the grounds on which the police officer wanted to carry out a personal search of the lawyer who was lawfully present at the police station, and whether the police order to undergo a strip search was connected with the exercise of the police officer’s duties. It also indicated that Mr. Semedliaiev had not been informed of his rights and obligations.

At 19.00 on the same day, the police escort left the courthouse and Mr. Semedliaiev was released. His detention thus lasted for more than 26 hours from 16.30 of 25 October until 19.00 of 26 October.

On 11 November 2021, Mr. Semedliaiev was summoned to the police station again. The same police officer, Mr. ██████████ drew up two new protocols on administrative offences for “police disobedience” under Article 19.3(1) of the Russian Federation Code on Administrative Offences. The protocols were dated 25 October 2021 and concerned the same subject-matter as those considered by the court on 26 October 2021 (“failure to stop video and audio recording inside the police station” and “failure to undergo a strip search”).

Following *in camera* court hearings, on 11 November 2021, the Tsentralny district court of Simferopol found Mr. Semedliaiev guilty as charged and sentenced him to 12 days of administrative detention and fined him 4,000 RUB (53.08 USD). At around 20.30 on the same day, Mr. Semedliaiev was arrested and taken to the Temporary Detention Facility in Simferopol.

As of 12 November 2021, Mr. Semedliaiev remained in the Temporary Detention Facility in Simferopol. According to the information received, Mr. Semedliaiev was released after 12 days.

Without prejudging the accuracy of these allegations, we express our serious concerns at the alleged charges for administrative offenses and detention of Mr. Semedliaiev, as a result of the legitimate exercise of his professional functions.

If confirmed, these facts would be in breach of the guarantees that lawyers are entitled to in order to perform their professional functions without any threat, intimidation, harassment or interference, and without suffering, or being threatened with, prosecution or any administrative or disciplinary sanctions for actions undertaken in accordance with professional duties and ethical standards. In particular, international standards provide that lawyers should not be subject to civil, criminal or disciplinary liability for statements made in good faith in written or oral pleadings or in their professional appearances before the judicial authority.

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 information about why Mr. Semedliaiev was called to the police station a second time, and later detained after the charges for administrative offences had been discarded.
3. Please provide information concerning the legal grounds for the arrest and detention of the Mr. Semedliaiev and how these measures are compatible with international norms and standards as stated, *inter alia*, in the UDHR and the ICCPR. Please provide information on whether all detainees have access to family members, legal counsel, and medical personnel.
4. Please indicate what measures have been taken to ensure that human rights defenders, including lawyers, civil society and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

We would appreciate receiving a response within 60 days. Past 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 responsible of the alleged violations.

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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw your attention to the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973.

In its General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant, the Human Rights Committee observed that States Parties are required by article 2(1) to respect and to ensure the Covenant rights “to all persons who may be within their territory and to all persons subject to their jurisdiction”. This means that a State party must respect and ensure the rights laid down in the Covenant to “anyone within the power or effective control of that State Party”, even if not situated within the territory of the State Party. This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained... (para. 10).

In resolution 74/168 and previous resolutions on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, the General Assembly urged the Russian Federation to, inter alia, “uphold all of its obligations under applicable international law as an occupying Power” (para. 6 (a)).

Article 14 (1) of the ICCPR, which sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 of the ICCPR provides a set of certain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a 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. They 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 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 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.

Principle 17 provides that “[w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities”.

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 9, paragraph 1, which provides for the right to benefit from an effective remedy and to be protected in the event of the violation of those rights;
- article 9, paragraph 3, point c), which provides for the right to provide legal assistance in defending human rights and fundamental freedoms;
- 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.