

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

Ref.: AL RUS 6/2022
(Please use this reference in your reply)

3 May 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 44/8, 41/12 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the interference with and detention of two attorneys/human rights defenders attempting to defend protestors of the military intervention in Ukraine that had been detained at a police station in St. Petersburg.

Mr. Alexey Kalugin and Mr. Sergei Podolsky are attorneys and human rights defenders, working with the organization OVD-Info, defending among others anti-war protestors.

According to the information received:

On the night of 6 March and early morning of 7 March 2022, in St. Petersburg, a number of people had been detained for protesting against the military intervention of Russia in Ukraine and were being held in numerous police departments.

Attorneys Aleksey Kalugin and Sergei Podolsky, both of whom work with OVD-Info, arrived at St. Petersburg police department No. 31, on 7 March, to represent the interests of a detainee who was held there. Both lawyers had attorney licenses and orders (a legal document confirming the powers in a specific case) with them.

The officer on duty reportedly refused them entry into the station, citing an order from his superiors. The lawyers started filming with their phones and responded that they wanted to write a complaint about the officers' wrongful conduct. The duty officer reportedly said he would come out to talk to them. After a while, another officer - commanding officer of the police station, [REDACTED] - did indeed come out to talk with the attorneys. He allegedly did not introduce himself, nor did he show his police badge. Reportedly, the only means by which Mr. Kalugin could have presumably identified him as a member of law enforcement were his uniform and the fact that he was leaving the police administrative building.

[REDACTED] reportedly demanded that Mr. Kalugin stop filming. According to reports, the officer knocked the telephone out of Mr. Kalugin's

hand and twisted his arm so that he would stop filming. After that, [REDACTED] allegedly tried to handcuff Mr. Kalugin but was unable to do it alone. Another officer came running to help him and reportedly pinned Mr. Kalugin up against the gate. They then took him into the station. According to reports, the handcuffs were put on incorrectly, in a painful position, i.e.: one hand was facing up, while the other was facing down. The handcuffs left marks on Mr. Kalugin's wrists.

Mr. Kalugin was reportedly in handcuffs for a total of 15 minutes. At that point, the other attorney, Mr. Podolsky, who they also let into the station, requested that they take Mr. Kalugin to the office of the commanding officer. The commanding officer ordered that Mr. Kalugin's handcuffs be removed, but allegedly still obstructed the attorneys' work. Mr. Kalugin was not able to speak to his client. Mr. Podolsky could only see the client briefly and determine conditions of detention.

The commanding officer reportedly accused Mr. Kalugin and Mr. Podolsky of "defending Nazis" and of abetting them, threatening them both with criminal prosecution for using violence against a state agent (Criminal Code article 318) and insulting an officer (Criminal Code article 319). According to reports, he used degrading language, swear words and direct threats against both attorneys, stating that Mr. Kalugin would lose his attorney's license.

The commanding officer then reportedly demanded that Mr. Kalugin delete the video from his phone, which Mr. Kalugin complied with, though it was later restored. The commanding officer allegedly only allowed Mr. Podolsky to help his client after the video was deleted and threatened to cite Mr. Kalugin for failure to obey the police (Administrative Code article 19.3). Both attorneys were later released at 6:15 am on 7 March.

Mr. Kalugin filed a criminal complaint with the investigative department for the Kirovsky District of the Investigative Committee of the Russian Federation for St. Petersburg pertaining to the crime under paragraph. n. "a", "b" part 3 of art. 286 of the Criminal Code of the Russian Federation, namely, the commission by officials of actions that clearly go beyond their powers and entail a significant violation of their rights and legitimate interests, as well as the legally protected interests of society or the state, committed with the use of violence and special means. Mr. Podolsky was interviewed as a witness on 11 March by the Investigative Committee.

On 13 March 2022, Mr. Kalugin also filed a formal complaint with the Prosecutor's Office of the Kirovsky District of St. Petersburg regarding alleged violations of the law by the authorities.

On 18 March 2022 OVD-Info launched an online petition to Minister of the Interior Affairs [REDACTED], Ombudsman [REDACTED] and members of the Human Rights Council demanding that they examine the incident and put an end to violence against lawyers.

These complaints are being processed and no reply has been received yet by Mr. Kalugin.

Reports we have received indicate that the actions by law enforcement against the lawyers have occurred in a context of daily mass detentions of anti-war protestors, since 24 February 2022. These detentions are reportedly often accompanied by violence. On 6 March 2022 alone, we have received numerous reports of dozens of recorded cases of severe beatings. In some cases, there were serious injuries — some of the detainees reportedly had their heads smashed against a wall or the floor, others had a sprained ligaments, and dislocated shoulders. In St. Petersburg, the security forces have exercised excessive use of force, according to the observations in reports we have received. In particular, they allegedly repeatedly used stun guns on detainees. We have also received reports of numerous cases of violence in other cities, for instance, Moscow and Nizhny Novgorod. Reportedly, no information has been made available of cases where concerned law enforcement officers were held responsible for acts of excessive use of force against protestors and lawyers. On the other hand, protestors are persecuted on charges of violence, allegedly most often for acts of self-defense or when defending others. Although lawyers and attorneys are crucial in securing and protecting the exercise of the rights to freedom of peaceful assembly and of association, there have been many reports of cases of no admission of lawyers to police departments — at least 137 cases were recorded since 24 February 2022, according to the information we received.

Further, it is reported that Police departments reportedly announced the so-called “Fortress” contingency plan, which is secret and based on an instruction rather than any law. The plan is reportedly part of police official instructions and is introduced in case of a real threat to the police department, for example, a terrorist attack. The actions of employees of the police department during the “Fortress” are regulated by documents that are labeled as ‘state secrets’, and the public does not have access to them. Reportedly, when implemented, the plan instructs the police departments to have their entrance and exit completely blocked, and the personnel to hold the defense. The head of the department either initiates the plan, or at least knows about its introduction. It is reported that this measure has been used to block access to the police departments since at least 2017.

While we do not want to prejudge the accuracy of these allegations, we express our serious concerns at information received that describes interference with the work of Mr. Kalugin and Mr. Podolsky, as lawyers, as well as, their detention, intimidation and interrogation, which seem to be in direct correlation with the legal services they provide to people detained for exercising their rights to freedom of peaceful assembly and of expression regarding their opposition to the war in Ukraine. We are also concerned that the instance is described as part of a wider pattern of interference with the work of lawyers, including the so-called “Fortress” contingency plan. If confirmed, the events described above would amount to a serious breach of a number of international and regional standards relating to the free and independent exercise of the legal profession.

According to these standards, States must put in place all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. In particular, States must ensure that lawyers are not subject to, or threatened with, prosecution or any administrative, economic or other sanctions for any action taken in accordance with

recognised professional duties, standards and ethics. International and regional standards also expressly prohibit the identification of lawyers with their clients or their clients' causes in the discharge of their professional duties.

We would also like to take this opportunity to express our concern at the information received regarding the mass arrest and detention of individuals exercising their legitimate right to peaceful assembly, in protest of the war in Ukraine, and the difficulties that the lawyers for these individuals are facing when protecting them that impedes them from carrying out their work. Mandate-holders already made a reference to this situation in 22 April 2022, in an allegation letter to Your Excellency's Government (RUS 3/2022).

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 basis for impeding the access of Mr. Kalugin and Mr. Podolsky to a client detained in the police station, as well as for handcuffing and detaining Mr. Kalugin, and explain how these actions could be regarded as being in conformity with international standards relating to the free and independent exercise of the legal profession.
3. Please provide detailed information on the legislative and other measures adopted by the Russian Federation to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (principle 16 (a) of the Basic Principles on the Role of Lawyers) and to prevent that they are subject to, or be threatened with, prosecution or administrative, economic or other sanctions as a result of their identification with their clients or their clients' causes as a result of discharging their functions (principle 18). In this regard, please provide information on the "Fortress" contingency Plan and how lawyers may continue to exercise their profession if the Plan is in place.
4. Please provide information on the steps your Excellency's government have implemented to ensure that human rights defenders and civil society representatives working in the Russian Federation can carry out their legitimate activities in a safe, secure and enabling environment, free from threats, harassment, intimidation 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(s) responsible for the alleged violations.

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

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

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

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, and to the Basic Principles on the Role of Lawyers.

Article 14 of the ICCPR provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

We further recall that detained persons should have access, from the moment of arrest, to legal assistance of their own choosing. In its most recent report to the Human Rights Council (A/HRC/45/16), the Working Group on Arbitrary Detention highlighted that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty, and that such assistance 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 (see paras. 50-55).

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 also recall that according to article 21 of the ICCPR, “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”. The ‘provided by law’ requirement means that any restriction ‘must be made accessible to the public’ and ‘formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly’ (CCPR/C/GC/34).

We wish to underscore that failure to notify authorities of an assembly does not render it unlawful, and consequently should not be used as a basis for dispersing the assembly. We further note that this applies equally in the case of spontaneous assemblies, where prior notice is otherwise impracticable or where no identifiable organizer exists (A/HRC/31/66 para. 23). We would also like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of

Force and Firearms by Law Officials, which provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms”, and the Code of Conduct for Law Enforcement Officials, ensuring protesters right to peaceful assembly and without resorting to excessive use of force. Only the minimum force necessary may be used where this is required for a legitimate law enforcement purpose during an assembly. Once the need for any use of force has passed, such as when a violent individual is safely apprehended, no further resort to force is permissible (Code of Conduct for Law Enforcement Officials, art 3). Law enforcement officials may not use greater force than is proportionate under the circumstances for the dispersal of an assembly, prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders (Code of Conduct for Law Enforcement Officials, commentary to art. 3). In particular, we wish to remind your Excellency’s Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the aim pursued. In this regard, we remind that the State has the burden of proof to demonstrate whether the restrictions implemented are compatible with the requirements under the Covenant.

In a report, the Special Rapporteur on the rights to freedom of peaceful assembly and of association further affirmed that “an enabling environment of civil society requires not only protection, but also proactive efforts to bring perpetrators of human rights violations to justice” and that “legal assistance, advice and representation are essential components of a fair and efficient justice system that is based on the rule of law” (A/HRC/47/24).

The freedom of opinion and expression is integral to the enjoyment of the rights to freedom of peaceful assembly and of association (General Comment 34 of the Human Rights Committee para. 4). The Human Rights Committee has affirmed that “States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression and that paragraph 3 (of article 19) may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights” (id. para. 23). The penalisation of individuals solely for expressing critical opinions about the government or the social system espoused by the government is incompatible with article 19 (id. para. 42).

I 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 18 specifies that lawyers are not to be identified with their clients or their client’s causes as a result of their professional functions.

Furthermore, we bring to your attention 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. We also refer to Article 5 (b) and (c), which provides for the right of all persons to form, join and participate in non-governmental organizations, associations and groups; and to communicate with non-governmental or intergovernmental organizations and article 11 which provides that everyone has the right, individually or in association with others, to the lawful exercise of their profession.