

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right to privacy and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Ref.: AL KGZ 2/2022
(Please use this reference in your reply)

3 November 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right to privacy and Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolutions 43/16, 50/17, 46/16 and 50/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged privacy violations, harassment, and ban on entry to Kyrgyzstan imposed on human rights defender Mr. Sergey Marinin, in connection with his legitimate human rights work.**

Mr. **Sergey Marinin** is a human rights defender and researcher from Kazakhstan.

According to the information received:

Since 15 June 2021, Mr. Sergey Marinin has been working for a non-governmental organisation on a project aimed at strengthening civil society and independent media across Central Asia. He was initially based in Kyrgyzstan and, as a citizen of Kazakhstan, was eligible to work there without any special permits.

On 6 April 2022, at 11:50 am, two unknown men, allegedly agents of the Kyrgyzstan's State Committee for National Security ("SCNS"), reportedly approached Mr. Marinin near his organisation's office on his way to work. They reportedly introduced themselves as representatives of a "Russian analytical centre", without showing business cards or telling anything specific about the centre. They asked him several questions about the activities of the non-governmental organisation where he worked. During the conversation, they reportedly showed knowledge of details of his personal life, which were not publicly available, for example, the city of birth and the name of his school in Kazakhstan. Mr. Marinin said he would meet them again on 11 April 2022, but then blocked their phone numbers for safety reasons as prompted by his colleague.

On 27 April 2022, at around 10 am, when Mr. Marinin was on his way to work, the same men waited for him at the bus stop near his home where he usually took the bus. They reportedly insisted on driving him to work and warned him not to record the conversation.

During a one-hour drive to his office, they reportedly offered unspecified “cooperation”, the details of which would be communicated to him later. Again, they displayed knowledge of the non-public details of Mr Marinin’s personal life, for example, his previous home address in Bishkek (where the landlord was allegedly the SCNS officer) and the fact that his family had recently sold a house. They showed Mr. Marinin screenshots from a video secretly filmed in the apartment he was renting and said that they had video evidence of his sexual orientation. They reportedly threatened to distribute the video and publicly disclose his sexual orientation if he did not agree to cooperate. Mr. Marinin was given two hours to decide, after which he was supposed to call them.

On the same day, Mr. Marinin told his colleagues and the management of the organisation what had happened and that he felt forced to reveal his sexual orientation. It was decided that he would leave for Kazakhstan for safety reasons.

That day the same men reportedly tried to call him and sent messages asking about his decision and urging him “not to hurry and think”. Using a mobile application allowing to identify phone numbers, Mr Marinin confirmed that their real names were different from the names they had given him. On 28 April 2022, Mr. Marinin left Kyrgyzstan and informed the men about it.

On 26 June 2022, he tried to return to Kyrgyzstan through the Ak-Zhol-road checkpoint. The Border Guard Service of Kyrgyzstan reportedly refused his entry without any explanation. The customs officers on Kazakhstan’s side of the border, upon Mr. Marinin’s request, are reported to have provided him with the refusal-of-entry act. The document was signed by the Border Service of Kyrgyzstan’s SCNS and did not contain any justification or details of the refusal.

Without wishing to prejudge the accuracy of the information received, we wish to express concern as to the alleged privacy violations, intimidation, harassment, and entry ban on Mr. Sergey Marinin, who appears to be targeted in connection with his legitimate human rights work.

In connection with these serious concerns, we would like to refer your Excellency’s Government to relevant international human rights instruments and standards, cited in the **Annex on Reference to international human rights law** attached to this letter.

As it is our responsibility, under the mandate 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 comments you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal grounds for the denial of entry of Mr. Sergey Marinin to Kyrgyzstan on 26 June 2022 and explain how these restrictions are compatible with your Excellency’s Government international human rights obligations.

3. Please provide the details and where available the results, of any investigation, which may have been carried out in relation to the allegations of the privacy violations against Mr. Sergey Marinin.
4. Please explain measures taken to guarantee the respect of the right to privacy and confidentiality of data of individuals and to ensure that such information is not used to target and discriminate against individuals on the basis of their sexual orientation and gender identity.
5. Please indicate what measures have been taken to ensure that human rights defenders, including staff members of non-governmental organisations, are able to carry out their legitimate work in a safe and enabling environment without fear of harassment, threats or acts of intimidation of any kind towards them.

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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Ana Brian Nougrères
Special Rapporteur on the right to privacy

Victor Madrigal-Borloz
Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Annex

Reference to international human rights law

In connection with the above-alleged facts and concerns, we would like to remind your Excellency's Government of its obligations under the International Covenant on Civil and Political Rights (ICCPR), acceded to by Kyrgyzstan on 7 October 1994, in particular, Articles 17 and 22, which guarantee to all persons the rights to privacy and freedom of association.

We would like to emphasise that human rights are universal and apply to everyone, irrespective of their sexual orientation or gender identity. The principles of equality and non-discrimination are part of the foundations of the rule of law and human rights. They are reaffirmed in Article 2 (1) of the ICCPR. The Human Rights Committee emphasised that States have a legal obligation to ensure everyone the rights recognised by the ICCPR without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, Paragraph 3).

Furthermore, 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 Recognised Human Rights and Fundamental Freedoms, adopted on 9 December 1998 (also known as the UN Declaration on Human Rights Defenders). Articles 1 and 2 of the Declaration state that everyone has the right to promote and to strive for the protection and realisation 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.

Likewise, 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 5 (b), which provides for the right to form, join and participate in non-governmental organisations, associations or groups;
- Article 9 (1), which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights; and
- Article 12 (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 their legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Finally, we would like to draw the attention of your Excellency's Government to Human Rights Council resolution 34/7 which notes "with deep concern that, in many countries, individuals and organizations engaged in promoting and defending human rights and fundamental freedoms are frequently subject to threats, harassment and insecurity as well as to unlawful or arbitrary interference with their right to privacy, as a result of their activities. The same resolution calls upon all States: "(b) To take measures to put an end to violations of the right to privacy and to create the conditions necessary to prevent such violations" and "(e) To provide access to an effective remedy to individuals whose right to privacy has been violated through illegal or arbitrary surveillance.

The Human Rights Committee has concluded that the right to privacy requires robust, independent oversight systems be in place regarding surveillance, interception and hacking, and by affording persons affected with effective remedies in cases of abuse, including an ex-post notification that they had been placed under surveillance or that their data had been hacked.¹

¹ [CCPR/C/ITA/CO/6](#), para. 36, 37.