

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur in the field of cultural rights; 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 situation of human rights in the Russian Federation and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Ref.: AL RUS 7/2023
(Please use this reference in your reply)

17 May 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur in the field of cultural rights; 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 situation of human rights in the Russian Federation and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 52/4, 46/9, 52/9, 50/17, 51/25 and 45/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged search of the homes of members of the Russian NGO "Memorial" as well as their offices, and the criminalization of Oleg Orlov in connection with his legitimate human rights work, the exercise of his freedom of expression and freedom of association.

International Memorial was a non-governmental organisation dedicated to investigating political repression in the former Soviet Republics and to promoting the moral and legal rehabilitation of persons subjected to political repression. International Memorial was founded in 1991 in Moscow. Its predecessor, the Moscow Initiative Group Memorial, was established in 1987 and gave rise to a number of regional organisations and groups. In 1989 they were united under the aegis of the All-Union Voluntary History and Education Society Memorial (registered in 1990). International Memorial's activities were aimed at supporting civil society, democracy and the rule of law to prevent a return to totalitarianism; popularisation of democratic values in society; and the strengthening of human rights in public and political life. International Memorial was forcibly dissolved by the judgment of the Supreme Court of Russia on 28 December 2021.

Moscow Memorial is a regional non-governmental organisation working on similar issues. It used to be a member organisation of International Memorial.

Memorial Human Rights Defence Centre is a non-registered non-governmental organisation founded in June 2022 by supporters of Memorial Human Rights Centre to continue the work of the latter NGO. Memorial Human Rights Centre was founded in 1993 in Moscow and became one of the first human rights NGOs in modern Russia. It worked in areas of civil strife that may or have already escalated into armed conflict, as well as in post-conflict situations, investigating whether human rights and international humanitarian law are respected. The organisation represented hundreds of victims of human rights violations both

domestically and before the European Court of Human Rights; provided free legal assistance to refugees and migrants; and compiled and maintained a list of political prisoners based on the definition endorsed by the PACE resolution 1900 (2012).

List of members of International Memorial and Memorial Human Rights Defence Centre affected by the raids:

- Yan Rachinsky, the chairman of the Board of the dissolved International Memorial;
- Oleg Orlov, co-chairman of Memorial Human Rights Defence Center and Board member of the dissolved International Memorial;
- Alexandra Polivanova, Board member of the dissolved International Memorial;
- The mother of Alexandra Polivanova;
- Nikita Petrov, Board member of the dissolved International Memorial;
- Galina Iordanskaya, Alena Kozlova, Irina Ostrovskaya, Alexander Guryanov, staff members of the dissolved International Memorial.

We previously wrote to your Excellency's Government regarding raids, seizures of property, prosecution, liquidation and interdiction relating to the human rights NGOs 'Justice Initiative', 'Memorial', 'Center of Support for the Indigenous Peoples of the North' and 'People in Need' (RUS 9/2019) and concerning the impending involuntary liquidation of the human rights organisations International Memorial Society and Human Rights Center "Memorial" (AL RUS 13/2021). We thank your Excellency's Government for the replies dated 31 March 2020 and 19 January 2022. However, we remain concerned, given the allegations below.

According to the information received:

A. *Searches*

On 21 March 2023, the Investigative Committee of Russia conducted searches of the homes of former staff and Board members of International Memorial. The searches were carried out in a total of 9 apartments, as well as in the office of Moscow Memorial and the former office of International Memorial.

According to the search warrants, criminal proceedings for "Rehabilitation of Nazism" were initiated against "unidentified staff members" of International Memorial on 3 March 2023.

Despite the searches being carried out 19 days after the case was opened, the Investigative Committee deemed them urgent and, thus, not requiring prior judicial authorisation. No justification for the urgency was provided.

Most of those whose homes were searched were not allowed to have their lawyers present despite their lawyers being present outside, at their address. Some of those who requested a written record of the search and the property

seized, were refused. During the search of Moscow Memorial's office, the request of Memorial's lawyer to be present during the search was refused. No record of the property seized was provided either.

Electronic devices, as well as documents relating to International Memorial's activities and items bearing Memorial's logo were seized during the searches. Several dozen boxes containing documents were taken away from the premises of Moscow Memorial.

Following the searches of the apartments, six of the former staff and Board members of International Memorial, were taken to the Tverskoy police station and later to the Tverskoy department of the Investigative Committee and questioned as witnesses in the "Rehabilitation of Nazism" case. Five of them were later released without charges.

B. *"Rehabilitation of Nazism" charges*

The charges of "Rehabilitation of Nazism", according to the investigators, are based on the inclusion by Memorial of the names of three WWII alleged Nazi collaborators in the Memorial "Victims of Political Terror" database, with the intention to "absolve the crimes" of Nazism.

Memorial's database of "Victims of Political Terror" contains more than 3 000 000 names. The cases contained in the database are largely based on information taken from so-called "Memory books" compiled in cities and regions on the basis of the 1991 Law on rehabilitation of victims of political repressions.

Two of the names cited in the investigation were included in Memorial's database because they appeared in a Memory book published in the Russian Republic of Tatarstan in 2001. This Memory book was prepared and approved by the authorities of Tatarstan. Later, the prosecutor's office refused to clear the criminal records of the two cited individuals after the book was compiled. However, their case files are still not accessible, so the nature of charges against them remains unknown.

The third individual cited in the investigation was an ethnic German who had been deported from the Odessa region during the series of ethnic deportations and the deportations of the people who were "suspected collaborators" during the Nazi occupation. He was included in lists of victims of repression on the basis of his deportation. In 1954 the same person was convicted of Nazi collaborationism during the occupation. Memorial did not include this person in the database nor attempt to absolve those later charges.

C. *Charges against Oleg Orlov*

The home of Oleg Orlov was searched the same day as the others under the search warrant citing the "Rehabilitation of Nazism" charges.

After questioning, Orlov was charged with the criminal offence of "repeatedly discrediting the Russian Armed forces". Orlov had twice previously been charged and found guilty under administrative law for "discrediting the

Russian Armed forces” for staging his anti-war pickets. The criminal charges were based on Orlov's Facebook post containing his article “They wanted fascism. They got it”. Orlov was released under the condition that he would not leave Moscow.

Without wishing to prejudge the accuracy of the information received, we wish to express concern about the searches carried out in the homes of staff and Board members of International Memorial, as well as in the office of Moscow Memorial and the former office of International Memorial. These searches have been carried out without prior judicial authorization and without the presence of lawyers. Additionally, we also wish to express concern as to the criminalisation of Mr. Oleg Orlov, which appears to be related to his legitimate human rights work and the exercise of the freedoms of expression and of association.

Finally, we also express our grave concerns regarding the use of broad and vaguely formulated legislative provisions, such as article 354.1(2)b of the Russian Criminal Code (“Rehabilitation of Nazism”) and article 280.3(1) of the Russian Criminal Code (“Repeatedly Discrediting the Russian Armed forces”), carrying imprisonment sentences, to restrict freedom of expression, in violation of the principle of legal certainty under international law. We remain concerned at the serious chilling effect it may have on human rights defenders and on fundamental freedoms, notably the freedom of expression, and the freedoms of assembly and of association, and the right to seek, receive and impart information and ideas of all kinds, including research and publications on the history of human rights situations and violations, as guaranteed under international human rights law.

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 details on the factual and legal basis for the charges against Mr. Orlov and for the searches in the houses and office premises of Moscow Memorial and International Memorial.
3. Please provide precisions on the criminal offences falling within the scope of article 354.1(2)b of the Russian Criminal Code on “Rehabilitation of Nazism”, as well as article 280.3(1) on “Repeatedly Discrediting the Russian Armed forces”, and explain what guarantees are provided to ensure that these provisions are not arbitrarily used to prosecute and sentence human rights defenders for their exercise of their freedom of opinion or expression.
4. Please indicate what measures have been taken to ensure that human rights defenders and civil society actors in the Russian Federation are

able to carry out their legitimate work, including through the exercise of their rights to freedom of opinion and expression, of peaceful assembly and of association and the right to seek, receive and impart information about historical research in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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.

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 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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Alexandra Xanthaki
Special Rapporteur in the field of cultural rights

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

Mariana Katzarova
Special Rapporteur on the situation of human rights in the Russian Federation

Fabian Salvioli
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

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 following human rights standards.

We would like to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights ("ICCPR"), ratified by the Russian Federation on 16 October 1973, which guarantees the right to freedom of opinion and expression.

The right to freedom of expression includes the right to seek, receive, and impart information and ideas of all kinds. As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), such information and ideas include commentary on one's own and on public affairs, discussion of human rights, and journalism (paragraph 11). All forms of expression and means of their dissemination are protected (paragraph 12). As stated by the Special Rapporteur in the field of cultural rights, academic freedoms include the right for researchers and the academic community, individually or collectively, to pursue, develop and transmit knowledge and ideas through research, teaching, study, discussion, documentation, production, creation or writing. She stressed that history teaching should promote critical thinking and adopt a broad and multifaceted approach, taking into account the right to freedom of opinion and expression, the right to information and education, academic freedoms and the rights of individuals and groups to have access to their cultural heritage and that of others (A/68/296).

We would like to remind your Excellency's Government that any restrictions to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 19 (3) of the ICCPR. Under these standards, restrictions must be provided for by law and conform to the strict tests of necessity and proportionality. Article 19 (3) may never be invoked to justify the muzzling of any advocacy of human rights (paragraph 23). Nor, under any circumstance, can 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 (Id.). In addition, in its General Comment No. 34, para. 49, the Human Rights Committee stated that laws that penalize the expression of opinions about historical facts are incompatible with the International Covenant on Civil and Political Rights, which does not permit general prohibitions of expressions of an erroneous opinion or an incorrect interpretation of past events.

We would also like to refer your Excellency's Government to articles 14 and 17 of the ICCPR, which provide for the right to a fair trial and the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence.

We would like to further remind your Excellency's Government that Article 22 (2) of the ICCPR provides that no restrictions may be placed on the exercise of this right other than those which are prescribed by 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. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights also state in para. 30 that national security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

We would like to also refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba). According to principle 16 (a), Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. Moreover, according to principle 21, it is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

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 6 (a), (b) and (c), which provides for the right to know, seek, obtain, receive, and hold information about all human rights and fundamental freedoms; to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;

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;

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.

In addition, we would like to recall that States where serious human rights violations have taken place have a duty to establish, preserve and transmit to current and future generations the truth and memory of those violations, including the actions and responsibilities that led to them and the harm suffered by victims, in order to guard them from extinction and contribute to the prevention of their recurrence (Updated set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, articles 2 and 3). We would also like to recall that Human Rights Council resolution 12/11 on Human rights and transitional justice reaffirms the important role played by human rights defenders, victims' associations and other actors of civil society in the realization of transitional justice goals and in the reconstruction of the society, as well as in the promotion of the rule of law and accountability (para. 14). As stated by the Special Rapporteur in the field of cultural rights, from a human rights perspective, what counts is creating conditions that allow a multi-layered and interactive debate on past events and actions that enables society to overcome "completely separate and unrecognized accounts of what happened" (A/HRC/25/49, para. 20).

In reference to the criminalization of "rehabilitation of Nazism" and "Repeatedly Discrediting the Russian Armed forces", we bring to your Excellency's attention the 'principal of legal certainty' under international law which requires that criminal laws are sufficiently precise so as to render clear what types of behaviour constitute a criminal offence and what would be the consequence of committing such an offence. In this regard, legal frameworks must be formulated with sufficient precision so that any individual can regulate his or her conduct accordingly, and, so as to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse and may lead to arbitrary deprivation of liberty. Furthermore, the principle of legality requires that the law must classify and describe offences in precise and unambiguous language that narrowly defines the punishable behaviour.

We also underline that any restriction on expression or information that a government seeks to justify on the grounds of national security and counter terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that national security legislations with penal sanctions should not be misused against individuals who peacefully exercise their rights to freedom of expression and freedom of peaceful association and assembly. These rights are

protected under ICCPR and non-violent exercise of these rights is not a criminal offence.

Finally, we would like to stress the obligation of States to provide and protect the full range of fair trial and due process rights as required under international human rights law, to all individuals deprived of their liberty. In particular, we emphasize the legal and procedural safeguards provided for in article 14 of the ICCPR, including the presumption of innocence and the right to legal representation.