

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 and the Special Rapporteur on the situation of human rights in the Russian Federation

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(Please use this reference in your reply)

6 June 2023

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 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 and Special Rapporteur on the situation of human rights in the Russian Federation, pursuant to Human Rights Council resolutions 52/4, 52/9, 50/17 and 51/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the persecution of the environmental human rights defenders and anti-war activists Ms. Polina Oleynikova, Mr. Arshak Makichyan and his family members.**

Mr. Arshak Makichyan and Ms. Polina Oleynikova are environmental human rights defenders and anti-war activists from Russia. Mr. Makichyan has been the coordinator of the Fridays for Future movement in Russia since 2019. Mr. Artur Makichyan has worked as a businessman since 1997 and ran a print shop until he was forced to leave Russia. Mr. Gagik Makichyan is a musician and Mr. Armen Makichyan is an IT specialist. Mr. Artur Makichyan is the father of Messrs. Arshak, Armen and Gagik Makichyan,

According to the information received:

Since 2019, Mr. Makichyan and Ms. Polina Oleynikova have been participating in several protests and strikes in relation to climate change and anti-war activism, as well as protests organized by opposition leaders. They have been persecuted and administratively sanctioned several times, as detailed below.

On 23 July 2019, Mr. Makichyan participated in a one-man demonstration in Moscow to draw attention to climate change. An unknown man allegedly approached him and started threatening to stab him if he did not take the poster down. After a couple of minutes during which Mr. Makichyan was being insulted, he eventually removed the poster and decided to call the police. The unknown man left before police arrived and Mr. Makichyan filed a complaint against him.

On 27 July 2019, Mr. Makichyan participated in a protest in Moscow organized by opposition leaders banned from running to Moscow City Duma. According to the Kuzminsky District Court of Moscow decision on 8 August 2019 (case N° 5-1215/19), Mr. Makichyan was fined 20,000 RUB (approximately 250 USD) under article 20.2 para.5 of the Code of

Administrative Offenses on violations of the established procedure for holding public assemblies. According to the court decision, Mr. Makichyan ignored police orders and continued chanting slogans offending the President of the Russian Federation and the authorities, attracting the attention of citizens and media.

On 25 October 2019, Mr. Makichyan participated in another climate event, in Moscow, holding a poster with the inscription “CLIMATE EMERGENCY,” “The climate crisis affects absolutely everyone.” According to the Meshchansky District Court of Moscow decision on 20 December 2019 (case n°05-2965/2019), Mr. Makichyan was administratively arrested for a 6-day period under article 20.2 para.2 of the Code of Administrative Offenses on the organisation or holding of public events without providing prior notification. According to the court decision, Mr. Makichyan was amongst the participants holding a poster with the inscription specified above, attracting the attention of citizens, bloggers and media to himself and the other participants in the action.

On 24 July 2020, Mr. Makichyan participated in a one-man picket, in Moscow, holding a poster “Strike for the climate.” According to the Tverskoy District Court of Moscow decision on 17 September 2020 (case N° 05-0593/2020), Mr. Makichyan was fined 15,000 RUB (approximately 190 USD) under article 20.6.1 para.1 of the Code of Administrative Offenses on participation in unauthorised public assemblies that interfered with the functioning of life support facilities, transport or social infrastructure. In its decision, the court argued that the one-man protest qualified as public assembly and therefore infringed on the emergency measures in force at that time in relation to COVID-19.

On 7 January 2022, Mr. Makichyan participated in a one-man protest, in Moscow, holding a poster stating “A new war stole New Year” to protest the deployment of Collective Security Treaty Organization’s troops in Kazakhstan. According to the Khamovnichesky District Court of Moscow decision on 15 June 2022 (case N° 05-0091/2022), Mr. Makichyan was fined 20,000 RUB (approximately 250 USD) under article 20.2 para.5 of the Code of Administrative Offenses. The court decision is classified and not available to the public.

On 16 January 2022, while Ms. Polina Oleynikova was posting leaflets on the police departments’ buildings in Moscow, she was allegedly arrested and taken to the police station of the Tverskoy District of Moscow before being charged under article 20.1 para. 1 of the Code of Administrative Offences with petty hooliganism, namely her acts were qualified as a “violation of the public order by showing disrespect for society accompanied by damage to someone else's property, namely, she posted a leaflet on an information stand located on the facade of the building of the department of the Ministry of Internal Affairs of Russia for the Tverskoy District of Moscow”.

The following day, police came to her home, allegedly in connection with the leaflet action, intending to charge her under article 20.2 of the Code of Administrative Offences for violation of public assembly rules. Ms. Oleynikova allegedly managed to exit her apartment without being arrested, concerned for her own safety.

On 25 January 2022, she was allegedly detained and taken to the police station of the Khamovniki District of Moscow, where she was charged under article 20.2 para.2 of the Code of Administrative Offences. The following day, the Khamovnichesky District Court of Moscow sentenced her to 30 hours of compulsory community service for the alleged violation of article 20.2 para. 5 of the Code of Administrative Offences. According to the court decision, Ms. Oleynikova undertook actions which she gave notice of in advance on her social media account on Instagram, namely, she picketed in front of the building of the department of the Ministry of Internal Affairs for the Khamovniki District of Moscow with a placard in her hands, which she later posted on the façade of the building, drawing the attention of citizens and the media. She appealed the decision with the Moscow City Court on 7 February 2022, which was dismissed as of 5 May 2022.

On 25 February 2022, as Mr. Makichyan and Ms. Oleynikova were on their way to the Moscow city centre, they were stopped by police in a street near their home. Ms. Oleynikova was dressed in an army uniform covered in bright red paint and was holding a flag with the inscription “Empire of evil you are ordinary murderers”. As she later explained, she was planning to draw public attention in protest to the armed attack by the Russian Federation against Ukraine, which commenced on 24 February 2022. However, she did not manage to do it as she was pre-emptively arrested. The Presnensky District Court of Moscow fined Ms. Oleynikova 20,000 RUB (approximately 250 USD) under article 20.2 para. 5. As per court decision of 2 March 2022 in the case N° 05 0407/2022, Ms. Oleynikova was found guilty of participating in an unauthorised public assembly.

On 19 March 2022, Mr. Makichyan and Ms. Oleynikova fled Russia given their alleged continuing persecution and criminalization for their activism.

Regarding the Russian citizenship of Mr. Makichyan and his family members

Mr. Artur Makichyan, came to Russia from Armenia in 1995 and obtained a permanent residence registration in 1997. After the collapse of the Soviet Union, he did not receive Armenian citizenship. He lived in Moscow with a Soviet passport, which was permitted by the Law of 28 November 1991 No 1948-I "On Citizenship of the Russian Federation."

In 2002, Mr. Artur Makichyan applied for a Russian passport based on article 14§4 of the Law № 62-FZ "On Citizenship of the Russian Federation," dated 31 May 2002. Mr. Artur Makichyan met all requirements. In November 2002, the Migration Department of the Ministry of Interior Affairs issued him a passport.

In 2004, Mr. Artur Makichyan's sons, namely Messrs. Arhsak, Armen and Gagik Makichyan, also received Russian passports at their father's request under article 14, part 6(a).

In May 2022, the Shatura City Prosecutor appealed to the Shatura City Court of Moscow Region, demanding to cancel the decisions on the acquisition of citizenship by Mr. Arshak Makichyan, his father and two brothers, claiming

that in 2004 when Mr. Artur Makichyan applied for citizenship for his children, he would have deliberately provided false information about himself.

On 24 October 2022, the Shatura City Court of Moscow Region, issued a decision (Case No. 2-864/2022) partially satisfying the Shatura City Prosecutor's appeal. It recognized the illegality of the decision of the Federal Migration Service of Russia to issue the Russian citizenship to Mr. Artur Makichyan's sons on 12 October 2004, as well as the illegality of the decision of the Federal Migration Service of Russia to issue a new passport to Mr. Artur Makichyan on 30 October 2007. The court decision therefore did not recognize Mr. Artur Makichyan and his sons as having acquired the citizenship and removed them from the residency registry.

On 28 November 2022, Mr. Artur Makichyan and his sons' legal representatives filed an appeal against the Shatura City Court decision (Case No. 2-864/2022).

On 25 January 2023, the Court of Moscow Region held a hearing on the appeal complaint, during which one of the judges asked the representative of the Interior Ministry and the prosecutor's office to provide clarifications. The hearing was postponed until 27 February 2023. However, the next day, the family's legal representative received a call from the court's secretary, informing them that the court would resume the hearing on 1 February 2023.

On 1 February 2023, the judge who had clarifying questions was replaced, and all the arguments put forward in the appeal complaint were ignored by the presiding judge. The latter also refused to satisfy all motions from the family representatives. The court left the decision of the Shatura City Court unchanged.

On that same day, while exiting the court hearing, officers of the Patrol and Checkpoint Service of the Ministry of Internal Affairs arrested Mr. Artur Frunzikovich Makichyan, on the alleged presence of signs of forgery in his passport, claiming that an expertise should be carried out. Mr. Artur Frunzikovich Makichyan was brought to the Ministry of Internal Affairs Migration Department in Krasnogorsk, where an officer issued an act of passport seizure. Artur Makichyan was also given a notification about the decision of the Federal Security Service that the "period of temporary stay of a foreign citizen or stateless person was reduced" and he must "leave Russia within three days." He was also notified of an indefinite ban from entering the Russian Federation.

At about 4:00 p.m. that same day, Mr. Gagik Makichyan was arrested by Federal Security Service agents in Moscow and brought to the Migration Department of the Ministry of Internal Affairs in Krasnogorsk at about 5:30 p.m. He was taken to a "preventive interview" ("профилактическая беседа"), where no legal representative was admitted. No documents were drawn up and issued to Mr. Gagik Makichyan, although he was also told that he was forbidden to enter the Russian Federation and must leave the country within three days. Since Mr. Gagik Makichyan did not have a passport of another country, he was asked to immediately leave the country before 11.59 p.m., as after this deadline his passport would be marked as cancelled in the Ministry

of Internal Affairs' information system. At 6:36 p.m., Russian Federal Security Service agents took Mr. Gagik Makichyan to Vnukovo Airport, and he left Russia without any belongings and without a chance to say goodbye to his relatives.

On 3 February 2023, Mr. Artur Makichyan left Russia.

On 28 April 2023, the President of the Russian Federation signed a new [law](#) "On Citizenship of the Russian Federation". Its article 26 gives the Federal Security Service the authority to annul citizenship if a person "poses a threat to national security." Such person will only have 10 days to appeal and will be deported if the decision is upheld by a court. The law will enter into force after 180 days.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our utmost concern at the criminalisation, sentencing and deprivation of nationality of the human rights defenders mentioned above and some of their family members. We remind your Excellency's Government that the criminalisation of the legitimate defence of the human rights of others and exercising the right to freedom of opinion and expression, as well as the right to freedom of peaceful assembly, would be incompatible with international human rights law. We are concerned that the criminalization and the withdrawal of citizenship are acts of intimidation and retaliation for their legitimate work as human rights defenders. We also express our concern about the new law that was signed by the President of the Russian Federation on 28 April, which can be misused to silence critical voices.

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 comments you may have on the allegations mentioned above.
2. Please provide information about the factual and legal basis for the arrests, detention, charging, and sentencing of the above-mentioned human rights defenders and their family members and explain how these actions comply with Russia's obligations under international human rights law.
3. Please provide information on steps taken by your Excellency's Government to ensure that human rights defenders are able to exercise their right to freedom of expression and of peaceful assembly, and carry out their legitimate work freely, in a safe and enabling environment without acts of intimidation and harassment against them, their family members and loved ones.

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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

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 the General Comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. An attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest, torture, threats to life and killing, cannot be compatible with article 19 (GC34 paragraph 23).

We wish to refer to the article 21 of the ICCPR, which "protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches" (CCPR/C/GC/37, para. 6). We also recall that according to article 21, "[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 also wish to bring to the attention of your Excellency's Government article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14 (1) of the ICCPR 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. As emphasised by the Human Rights Committee in General Comment No. 32 (CCPR/C/GC/32), all trials in criminal matters must in principle be conducted orally and publicly (paragraph 28). The publicity of hearings ensures the transparency of proceedings and

thus provides an important safeguard for the interest of the individual and of society at large (Id.).

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 (a), which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: to meet or assemble peacefully;
- 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.