

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights in the Russian Federation

Ref.: AL RUS 9/2023
(Please use this reference in your reply)

12 June 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights in the Russian Federation, pursuant to Human Rights Council resolutions 52/9 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 arrest, detention and charges against Evan Gershkovich by Russia's Federal Security Service (FSB) on 29 March 2023 in Yekaterinburg.

Mr. **Evan Gershkovich**, a US citizen, is a journalist who has published for several well-known news-outlets, including The New York Times, The Moscow Times, Agence France-Presse, and the Wall Street Journal. He moved to Russia in 2017 where he started working for the Moscow Times, and then joined the Wall Street Journal in January 2022, working as a correspondent covering Russia and Russian affairs, including on the war in Ukraine.

According to the information received:

In late March 2023, Mr. Gershkovich travelled on a reporting assignment to Yekaterinburg where he was allegedly arrested and detained by the Federal Security Service (FSB). The FSB Investigation Department opened a criminal case for espionage under article 276 of the Criminal Code, asserting that he, "acting on the instructions of the American side, collected information constituting a state secret about the activities of one of the enterprises of the Russian military-industrial complex." In a public statement, the spokesperson of the President of the Russian Federation declared that Mr. Gershkovich had been caught "red-handed". This marks the first time Moscow had accused a US journalist of espionage since the Soviet era.

Mr. Gershkovich was held incommunicado and transported to Moscow, where he was brought to an initial Court hearing on 30 March before the Moscow's Lefortovo District Court. The building of the Court was fully evacuated and closed to the press and the case of Mr. Gershkovich was classified as top-secret. Mr. Gershkovich was allegedly denied the opportunity to select a lawyer of his choice and was appointed a lawyer by the Court. Mr. Gershkovich pleaded not guilty.

At the hearing of 30 March, Moscow's Lefortovo District Court ordered Mr. Gershkovich's pretrial detention in the detention centre of the Lefortovo prison in Moscow until 29 May 2023, pending the results of the investigation, as requested by the Federal Security Service.

On 4 April, Mr. Gershkovich was allowed access to a lawyer of his choice and on 17 April he was granted a consular visit in the presence of the Ambassador of the United States to Russia, H.E. Ambassador Lynne M. Tracy. This was 19 days after his arrest and 18 days after a request for a consular visit was sent.

On 7 April Mr. Gershkovich was indicted for espionage. The charges brought against him carry a maximum sentence of 20 years imprisonment in a Russian penal colony.

At a hearing 18 April, an appeal against pretrial detention order was denied; so too were requests for bail or house arrest. On 23 May, the District Court ordered the extension of Mr. Gershkovich's pretrial detention until 30 August 2023. Reportedly, no journalists were allowed during the Court hearing.

Another consular visit was requested for 11 May and for 19 May but both requests were denied by the Russian authorities. The decision to deny consular access coincided with the United States' refusal to grant visas to certain Russian journalists who planned to cover United Nations events in New York on 24 and 25 April, when Russian Foreign Affairs Minister Sergey Lavrov was chairing the UN Security Council meetings.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned about the arrest, detention and grave criminal charges brought against Mr. Gershkovich, a well-established journalist, working for a reputable international media outlet, carrying out the legitimate journalistic activities of gathering information and reporting on public affairs, including in relation to the war in Ukraine. In this context we wish to remind your Excellency's Government that the Human Rights Committee has held in General Comment 34 that under no circumstance can an attack on a person, because of the exercise of his freedom of expression, including attacks in the form of arbitrary arrests, be compatible with the freedom of expression.

It is particularly disturbing that charges of espionage have been brought against an accredited journalist who has been operating in Russia for a number of years. In her 2022 Human Rights Council report on media freedom and safety of journalists (A/HRC/50/21), the Special Rapporteur on freedom of opinion and expression highlighted the alarming trend of using criminal laws, including national security laws, to limit freedom of expression and in particular, the activities of journalists.

The arrest, trial and detention of Mr. Gershkovich raises serious concerns about his personal safety as well as the safety of all foreign journalists conducting their legitimate activities in Russia. The arrest and charges of espionage against Mr. Gershkovich appears to be reverting to a retrogressive practice and the closed trial increases concerns that the trial may be politically motivated.

The arrest and detention and the possible heavy sentencing of up to 20 years imprisonment in a penal colony, sends a clear and chilling message to all journalists and indeed to all persons wishing to express themselves freely in Russia. We are alarmed by the broad and severe pattern of repression and intimidation of journalists and other critical voices in Russia. We have previously expressed our strong [concerns](#)

about the so called 'fake war news law', amending the criminal code and the code on administrative offenses, including article 20.3.3 of the administrative offenses, imposing heavy sanctions on 'discrediting' the Russian armed forces. This effectively places Russia under a total 'information blackout' on the war in Ukraine.

We further express our concern about the alleged violation of fair trial standards during the arrest and detention of Mr. Gershkovich, including his right to access a lawyer and his right to consular access. We urge the Russian authorities to reconsider the charges and call for their dismissal and the immediate release of Mr. Gershkovich. At the very least we urge the authorities to uphold all fair trial standards, to grant the request for bail and to ensure full access to legal counsel as well as consular and family visits.

We urge your Excellency's Government to uphold fundamental rights in Russia, including the freedom of expression, and to ensure that any restrictions to these rights are applied strictly and narrowly, in full respect of international human rights laws and standards. In this context we wish to remind your Excellency's Government that the Human Rights Committee has held in General Comment 34 that under no circumstance can an attack on a person, because of the exercise of his freedom of expression, including attacks in the form of arbitrary arrests, be compatible with the freedom of expression.

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 information on the legal and factual grounds for the arrest, detention and charges brought against Mr. Gershkovich. Please explain how these measures comply with article 19 of the International Covenant on Civil and Political Rights.
3. Please provide information on the circumstances and conditions of the detention of Mr. Gershkovich, including information on his mental and physical health, and his ability to communicate with his lawyer and family.
4. Please explain how restrictions on freedom of expression in Russia, including the so called 'fake war news law', conform with international standards for freedom of expression, including article 19 of the ICCPR.
5. How does Russia ensure that journalists and media workers in the Russian Federation can exercise their legitimate rights to freedom of expression and engage in journalistic work, including in relation to the war in Ukraine, freely without fear of reprisals, judicial prosecution or

criminalization of any kind.

Please be informed that, considering the victim's nationality, a copy of the present letter has also been sent to the Government of the United States of America.

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.

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

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, we would like to refer your Excellency's Government to articles 6(1), 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), and articles 19 and 20 of the Universal Declaration of Human Rights (UDHR) which provides that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. [...] Everyone has the right to freedom of peaceful assembly and association."

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. 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.

In this connection, the Human Rights Committee in General Comment 34 has held that "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. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. Furthermore, in her report A/HRC/50/29, the Special Rapporteur for the right to freedom of opinion and expression expressed her concern about the criminalization of journalists including through laws that prohibit the criticism of state institutions or officials, negatively impacting media freedom and damaging democratic discourse and public participation.

We would like to remind your Excellency's Government that, in its resolutions, A/HRC/RES/25/18, A/HRC/RES/27/31, A/HRC/RES/32/31 and A/HRC/RES/34/5, the Human Rights Council noted with grave concern that "in some instances, national security and counterterrorism legislation and other measures ... have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law".

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 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.

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. She 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).

In its general comment no. 35 on the Right to Liberty and Security of Person, the Human Rights Committee recalled that when national security functions as a legal basis for criminal sanction it must, to meet the requirements of precision and clarity under the ICCPR (article 9(1)), be expressly linked to a defined set of criminal acts and not criminalize acts and entitlements which are lawful under international law (CCPR/C/GC/35).

We would also like to stress that national security and/or counter terrorism legislation with penal sanctions should never be misused against individuals exercising their rights to freedom of expression and freedom of association and of peaceful assembly and should not be misused to deprive such individuals of their personal liberty through arrests and detention. These rights are protected under ICCPR and the application of criminal law to the non-violent exercise of these rights would for most purposes be contrary to the Covenant. Counter-terrorism and/or security legislation cannot be used as an excuse to suppress peaceful groups and their members, nor can it have the chilling effect of suppressing the legitimate exercise of their rights. National security legislation cannot be used to hinder the work and safety of individuals, groups, and organs of society engaged in promoting and defending human rights (A/HRC/RES/22/6, para. 10).

We also bring your Excellency’s Government attention to the “principle of legal certainty” under article 15(1) of the ICCPR, which requires that criminal laws are sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes and seeks 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.