



Source: Amnesty USA

CLOONEY FOUNDATION FOR JUSTICE AND GIBSON DUNN SEEK RELIEF FROM UN FOR IMPRISONED CRIMEAN ACTIVIST

This statement can be attributed to a spokesperson for the Clooney Foundation for Justice. For further inquiries, please contact media@cfj.org

April 27, 2021

CHARGES

'Membership in a terrorist organization'; 'conspiring to seize power'

CONDUCT

Alleged possession of publications, participation in meetings at mosques

OUTCOME

Fourteen years imprisonment, additional year of restriction of freedom

Today, the Clooney Foundation for Justice and Gibson, Dunn & Crutcher LLP filed a [communication](#) with the United Nations (UN) Working Group on Arbitrary Detention on behalf of imprisoned Crimean Tatar activist Server Mustafayev, after a [TrialWatch Report](#) found serious violations of his rights during [criminal proceedings](#).

Along with seven co-defendants, Mr. Mustafayev was arrested in Crimea, taken over the border into Russia, and prosecuted for terrorist offences by a Russian Military Court based on his alleged involvement with an Islamic political group. The group is banned in Russia, but legal in Ukraine. In September 2020, Mr. Mustafayev was convicted and given a [14-year sentence](#), and is now incarcerated in a maximum security prison in Rostov-on-Don, Russia, 700 kilometers from his home. The communication alleges that Mr. Mustafayev's detention is arbitrary based on severe violations of his right to a fair trial under international law. His case is exemplary of the violations to which his co-defendants were also subjected, six of whom were convicted and given prison sentences of between 13 and 19 years.

The trial took place against the backdrop of what the UN Office of the High Commissioner for Human Rights [has described as](#) systematic targeting of "[i]ndividuals opposed to the Russian Federation's occupation of Crimea." Further, the charges against Mr. Mustafayev and his co-defendants fit a pattern: according to a local human rights organization, as of December 2020, at least [69 Crimean Tatars](#) were in pre-trial or post-trial detention on terrorism charges.

Human Rights Embassy monitored Mr. Mustafayev and his co-defendants' trial as part of CFJ's [TrialWatch](#) initiative, which monitors criminal proceedings around the world, grades their fairness, and [advocates](#) for individuals who are unfairly detained. On the basis of this monitoring, a [TrialWatch Report](#) released today finds that the proceedings entailed "severe violations" of the defendants' rights. For example, the Military Court convicted the defendants primarily based on the vague accounts of three prosecution witnesses, two of whom testified anonymously without justification or adequate procedural safeguards. Further, the [TrialWatch Report](#) found their testimony to be "rife with discrepancies." The resulting judgment was [manifestly arbitrary](#), in breach of the defendants' right to be presumed innocent.

"Mr. Mustafayev's trial was marred by egregious violations of due process that deprived him of any semblance of a fair trial as required under international law," **said Marryum Kahloon, Associate at Gibson, Dunn & Crutcher LLP.** "We request the Working Group take immediate action to call on Russia to end Mr. Mustafayev's continued arbitrary detention." "Mr. Mustafayev should not spend another day in detention based on such a biased assessment of the evidence," **added Stephen Townley, Legal Director of the TrialWatch initiative.** "As the TrialWatch Report makes clear, these defendants should be released."

BACKGROUND

Mr. Mustafayev—a Crimean Tatar, journalist, and the coordinator of Crimean Solidarity, a civil society initiative established following the 2014 Russian occupation of Crimea—is a human rights activist and practicing Muslim. Based on his and his co-defendants' alleged involvement in Hizb ut-Tahrir, an Islamic political group that is banned in Russia but operates legally in Ukraine, Mr. Mustafayev and six of his co-defendants were convicted on September 16, 2020 by the Southern District Military Court in Rostov-on-Don. Mr. Mustafayev was found guilty of “membership in a terrorist organization” under Article 205.5.2 of the Penal Code of the Russian Federation and “conspiring to seize power” under Article 278 of the Penal Code, and sentenced to 14 years in prison (with an additional year of restricted freedom). Six of his co-defendants were also convicted of similar offenses and received sentences of between 13 and 19 years. Mr. Mustafayev and one of his co-defendants have been continuously detained since their arrest on May 21, 2018, and his five other co-defendants have been detained since October 11, 2017.

The [TrialWatch Report](#) finds that the proceedings against the defendants “violated their fair trial and other human rights.” For example, the defendants did not have “adequate time between hearings ... to consult with their attorneys and effectively prepare their defense,” and were restricted from confidentially communicating with counsel. Further, the defendants spent the trial sequestered in an “aquarium,” a glass cabin from which they struggled to hear the proceedings, in violation of their rights to participate at trial and put on a defense.

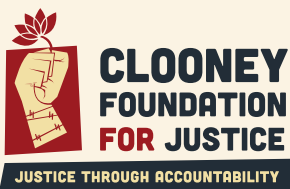
The [communication](#) to the UN Working Group on Arbitrary Detention argues that these severe violations of Mr. Mustafayev's fair trial rights—which are exemplary of the violations faced by his co-defendants—were of such gravity as to make his detention arbitrary. It therefore urges the UN Working Group to release Mr. Mustafayev and provide him with reparations, further explaining that:

- (i) Russia kept Mr. Mustafayev in pre-trial detention for approximately 17 months, without “provid[ing] individualized, substantiated reasons for this detention,” in violation of Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR);
- (ii) The Military Court prevented Mr. Mustafayev from calling and examining witnesses, in violation of Article 14(3)(e) of the ICCPR;
- (iii) The Military Court's verdict was arbitrary, in violation of Article 14(2) of the ICCPR;
- (iv) The Military Court ordered the removal of Mr. Mustafayev from the courtroom on numerous occasions—including at one point “for the remainder of the trial”—in violation of Article 14(3)(d) of the ICCPR; and
- (v) The Military Court “exhibited actual bias,” in violation of Mr. Mustafayev's right to be tried by a competent, independent and impartial tribunal under Article 14(1) of the ICCPR.

Compounding these egregious violations, during the trial, Mr. Mustafayev's own defense counsel—[Lilya Gemedzhi](#)—was found in contempt of court for actions directly related to her vigorous advocacy on his behalf, including attempting to confer with him during a break in a hearing, and arguing with the presiding judge. This is just a further indication of the proceedings' severe flaws.

Mr. Mustafayev is currently appealing his conviction to the Military Appeal Court in Vlasikha, Moscow. Proceedings there remain pending, but Mr. Mustafayev and his co-defendants face consistent, ongoing harm from their incarceration.

ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE



The Clooney Foundation for Justice's [TrialWatch®](#) initiative monitors and grades the fairness of trials of vulnerable people around the world, including journalists, women and girls, religious minorities, LGBTQ+ persons and human rights defenders. Using this data, TrialWatch advocates for victims and is developing a Global Justice Ranking measuring national courts' compliance with international human rights standards.