

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the human rights of migrants

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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; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the human rights of migrants pursuant to Human Rights Council resolutions 25/2, 25/18, and 26/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the retrospective charging and trial of human rights defender Ms. **Tatiana Kotlyar**.

Ms. Tatiana Kotlyar is a the deputy of Obninsk city council, chair of the Kaluga Movement for Human Rights, and a human rights defender working in particular for the protection of minority rights, including the rights of migrants and Roma peoples.

According to the information received:

In 2011, Ms. Tatiana Kotlyar began to allow migrants to register her home in the city of Obninsk as their place of residence for free, in order to enable them to apply for citizenship under the Russian programme of "voluntary resettlement". Under the resettlement programme, applicants are required to provide a registered place of residence in their application. In many cases, registration of a place of residence is reportedly obtained through paying a fee to companies. Ms. Kotlyar notified Russian migration authorities of her actions at the time, and they apparently acquiesced to their continuance.

On 6 February 2012, Ms. Kotlyar published an open letter to the President of the Russian Federation in response to a government initiative to introduce criminal liability for persons living without registered residences. In her letter, Ms. Kotlyar denounced the potentially discriminatory nature of the Russian system of residence registration.

On 2 January 2014, amendments to articles 322.2 (fictitious registration of a foreign citizen in a place of residence) and 322.3 (fictitious registration of a foreign citizen or stateless person at a place of stay in a residential area in the Russian Federation) of the Criminal Code of the Russian Federation were adopted. The amendments established criminal liability for the false registration of migrants in other individuals' homes.

On 11 March 2014, just over two months after the making of the above-mentioned amendments, a criminal case was opened against Ms. Kotlyar by the Investigative Committee of the Kaluga region. It was alleged that Ms. Kotlyar had submitted a request to the Local Migration Department to register three foreign citizens in her home, in violation of articles 322.2 and 322.3 of the Criminal Code. The allegations carry the potential punishment of three years' imprisonment.

On 30 April 2014, an investigative officer in the case against Ms. Kotlyar made an order for a psychiatric assessment of her to be carried out. On 6 May 2014, Ms. Kotlyar submitted a procedural complaint against the order for her psychiatric assessment to the Obninsk City Court of the Kaluga region under article 125 of the Code of Criminal Proceedings. Ms. Kotlyar has no history of psychiatric difficulties.

On 12 May 2014, the Obninsk City Court of the Kaluga region rejected the complaint made by Ms. Kotlyar. The court ruled that the order that Ms. Kotlyar be submitted to psychiatric examination complied with the requirements of the Code of Criminal Proceedings.

On 7 July 2014, the head of the Investigative Committee in the city of Obninsk annulled the order for Ms. Kotlyar to undergo psychiatric examination. On 10 July 2014, the pre-trial travel restrictions imposed upon Ms. Kotlyar as a result of the ongoing case against her were lifted. Ms. Kotlyar was not informed of these developments until 24 July 2014.

On 24 October 2014, a second criminal case against Ms. Kotlyar was opened under articles 322.2 and 322.3 of the Criminal Code of the Russian Federation, in relation to an instance of permitting migrants to register her home as their place of residence in 2013, prior to the amending of articles 322.2 and 322.3 of the Criminal Code.

On 2 October 2015, the trial of Ms. Kotlyar began at the Magistrates Court of the city of Obninsk. The final hearing in her trial was held on 28 October 2015. A judgement is expected in the case on 6 November 2015.

Concern is expressed at the two criminal cases brought against Ms. Tatiana Kotlyar, and in particular at the apparent retrospective nature of the accusations made in the second case against her. Further concern is expressed at the now-annulled order for her psychiatric examination, which appears to be an attempt to undermine the basis of her legitimate human rights work in exercise of her right to freedom of expression, in particular her work to defend the rights of migrants.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Reference to International Law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 information concerning the legal grounds for the allegations made against Ms. Kotlyar in the two criminal cases brought against her, as well as for the apparent retroactive application of the law in the second case.
3. Please kindly indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.
4. Please provide information regarding how all migrants, including irregular migrants, are able to access adequate housing in the private market or to public housing thereby overcoming any restrictions that may result in their being homeless or living in crowded, unsafe and unsanitary conditions.

We would appreciate receiving a response within 60 days.

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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

François Crépeau
Special Rapporteur on the human rights of migrants

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

We would like to refer your Excellency's Government to the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights (UDHR) and article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973.

We would also 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 Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization 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.

Furthermore, we would like to bring to the attention of your Excellency's Government article 6 points b) and c) of the UN Declaration on Human Rights Defenders, which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.

We would also like to refer to Human Rights Council resolution 22/6, which indicates that domestic law should create a safe and enabling environment for the work of human rights defenders, and which urges States to ensure that laws affecting human rights defenders are "clearly defined, determinable and non-retroactive".

We would like to bring to Your Excellency's Government's attention the International Covenant on Economic, Social and Cultural Rights ratified by Your Excellency's Government on 16 October 1973 which guarantees the right to adequate housing. The Committee on Economic, Social and Cultural Rights explicitly stated, in its general comment No. 4 (1991), that "the right to adequate housing applies to everyone" and that ensuring the right to adequate housing is essential to the inherent dignity of every human person (paras. 6, 7 and 9). The Committee on Economic, Social and Cultural Rights has further recommended "the effective implementation of existing legislation to combat discrimination in housing, including discriminatory practices carried out by private actors.

In addition, we would also like to bring to Your Excellency's Government's attention the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Your Excellency's Government on 4 February 1969 which provides for "the right of everyone, without distinction as to race, colour, or national or

ethnic origin, to equality before the law, notably in the enjoyment of ... the right to housing” (art. 5 (e) (iii)). The Committee on the Elimination of Racial Discrimination stated, in its general recommendation No. 30 (2004), that State parties must “remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the [area] of ... housing” and that they must “guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices” (paras. 29 and 32)