

Mandates of 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 defenders

REFERENCE:
AL RUS 3/2017

29 March 2017

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 rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 25/2, 32/32, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the sentencing of the non-governmental organization and think-tank *the SOVA Centre for Information and Analysis* (SOVA Centre) to a fine of 300,000 Russian roubles (approx. 5,250 USD) for the alleged violation of the Law on Introducing Amendments to Legislative Acts of the Russian Federation in Part Regulating Activities of Non-commercial Organizations which Carry Functions of Foreign Agents.

SOVA is a research and analysis centre founded in 2002 and based in Moscow. It conducts research, advocacy and monitoring activities on topics such as radicalism, nationalism and xenophobia, the relationship between religion and secular society, as well as the application of anti-extremist legislation in the Russian Federation.

The adoption and application the Law on Introducing Amendments to Legislative Acts of the Russian Federation in Part Regulating Activities of Non-commercial Organizations which Carry Functions of Foreign Agents has been the subject of previous communications sent on 11 July 2012, case code RUS 5/2012, ref A/HRC/22/67; 13 June 2013, case code RUS 3/2013, ref A/HRC/25/74; 18 December 2013, case code RUS 13/2013, ref A/HRC/16/21; 20 June 2014, case code RUS 5/2014, ref A/HRC/28/85; 14 November 2014, case code RUS 9/2014, ref A/HRC/28/85; 7 August 2015, case code RUS 4/2015, ref A/HRC/31/79; 25 February 2016, case code RUS 2/2016 ref A/HRC/32/53 and 14 April 2016, case code RUS 4/2016, ref A/HRC33/32. We acknowledge the replies sent by your Excellency's Government to a number of these communications, but remain concerned by the consequences that the application of this Law has on civil society actors and human rights defenders in the Russian Federation.

According to the information received:

In autumn 2016, an inspection of the SOVA Centre was carried out by the Ministry of Justice, as a result of which it was concluded that the activities of the Centre reportedly bear signs of carrying out the functions of a 'foreign agent'.

On 30 December 2016, the SOVA Centre was added to the list of non-governmental organisations carrying out the functions of a ‘foreign agent’ by the Russian authorities.

On 12 January 2017, the Ministry of Justice of the Russian Federation reported that the SOVA Centre neglected to register itself as a ‘foreign agent’, by which the Centre violated article 19.34 Part 1 of the Code of Administrative Offences of the Russian Federation.

On 17 February 2017, the SOVA Centre was notified that on 21 February 2017 the Basmanniy District Court of the Russian Federation would proceed to the consideration of an administrative case initiated by the Ministry of Justice against the SOVA Centre. The Centre was accused of neglecting to register itself as a ‘foreign agent’.

On 20 February 2017, the SOVA Centre filed a lawsuit in the Zamoskvoretsky District Court of Moscow against the Ministry of Justice, claiming that the results of the inclusion of the Centre in the list of ‘foreign agents’, as well as the results of the prior inspection leading to this decision, were not in compliance with legislation in force.

On 21 February 2017, on the date of the scheduled hearing, representatives from the SOVA Centre arrived at the Court, but did not manage to attend the hearing. They claimed they had been provided misleading information by Court officials on the exact time on which the hearing was due to commence.

On 21 February 2017, the Basmanniy District Court sentenced the SOVA Centre to a fine of 300,000 Russian roubles (approx. 5,250 USD) on a charge of neglecting to register as a ‘foreign agent’ with the Ministry of Justice. The judgement was delivered without the representatives of the SOVA Centre or the Ministry of Justice being present in the courtroom.

The SOVA Centre intends to appeal the aforementioned decision of the Court.

We express serious concern regarding the legal basis for the inspection of the SOVA Centre, the subsequent administrative case initiated against it and the sentencing of the SOVA Centre, which appears to be related to the organisation’s legitimate research activities in the field of human rights and fundamental freedoms in the Russian Federation. In this connection, we wish to reiterate our particular concern at the repeated use of legislation that criminalizes and obstructs the work of human rights defenders and civil society actors engaged in human rights protection. In particular, the application of the Federal Law on Introducing Amendments to Legislative Acts of the Russian Federation in Part Regulating Activities of Non-commercial Organizations, which Carry Functions of Foreign Agents appears to have considerable detrimental consequences on the work of human rights defenders and organisations. In particular, the application of the law appears to hinder significantly the exercise of their legitimate rights to freedom of association and freedom of expression.

We welcome amendments to the framework Federal Law ‘On the foundations of social control in the Russian Federation’ proposed by the Presidential Council for Civil Society and Human Rights, which could have implications on registering categories of civil society actors as ‘foreign agents’ and pave the way to improvements in this regard. However, we note with regret that in January 2017 the General Prosecutor’s Office of the Russian Federation criticised the aforementioned draft legislative proposal.

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 therefore 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 indicate how the actions undertaken by the Ministry of Justice and the Supreme Court of the Basmani District Court of the Russian Federation regarding the aforementioned case are compatible with the international human rights norms and standards relating to freedom of association and freedom of opinion and expression. In particular, please provide information about the legal basis for the inspection of the SOVA Centre in autumn 2016, and the justification for placing the SOVA Centre on the list of non-governmental organizations carrying out the functions of a “foreign agent”.

3. Please provide information on how the implementation and interpretation of the provisions contained in the Law on Introducing Amendments to Legislative Acts of the Russian Federation in Part Regulating Activities of Non-commercial Organizations which Carry Functions of Foreign Agents are in line with Russian Federation’s obligations under international human rights law, in particular with articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR).

4. Please provide information about the allegations that the representatives from the SOVA Centre were not correctly notified about the time of the hearing against the Centre on 21 February 2017.

5. Please provide information about measures taken to ensure that the Centre, if it decides to appeal the decision, is guaranteed a fair appeals procedure in compliance with the Russian Federation’s obligations under international human rights law.

6. Please kindly indicate what measures have been taken to ensure that civil society organizations, particularly those working in the defence and promotion of human rights, are able to carry out their work without fear of threats or acts of intimidation and harassment of any sort.

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

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, and 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.

First, we would like to refer to articles 19 and 22 of the ICCPR, ratified by the Russian Federation on 16 October 1973, that guarantee the rights to freedom of opinion and expression and freedom of association respectively.

In connection with the use of national security justifications, such as provisions on "foreign agents" to target human rights activities, we highlight that article 19(3) of the ICCPR sets out the requirements that any restrictions to the right to freedom of expression must be necessary, proportionate and prescribed by law that in itself is compatible with international human rights. While national security is a legitimate basis for restricting the right to freedom of expression under article 19(3), it is not enough to simply claim it as a justification to pursue illegitimate purposes such as silencing critical voices. The state has to demonstrate that it is necessary to do so to achieve a legitimate objective. We reiterate the statement by the Human Rights Committee in General Comment 34 that article 19(3) may never be invoked as a justification for the muzzling of any advocacy of human rights (CCPR/C/G/34).

We would also like to refer to Human Rights Council resolution 24/5 (operative paragraph 2), in which the Council "reminds States of their obligation to respect and fully protect the right of all individuals to... associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders... seeking to exercise or to promote this right, and to take all necessary measures to ensure that any restrictions on the free exercise of the right to freedom of association are in accordance with their obligations under international human rights law."

We refer likewise to 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. Articles 1 and 2 of the Declaration 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.

In that context, we would also like to refer to article 5(b) of the aforementioned Declaration, which provides for the right to form, join and participate in non-governmental organizations, associations or groups; and article 6, which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, as well as 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.

Furthermore, in the context of the Law on Introducing Amendments to Legislative Acts of the Russian Federation in Part Regulating Activities of Non-commercial Organizations, which Carry Functions of Foreign Agents, we would also like to recall the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, which calls on Member States to “ensure that associations... can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities” (A/HRC/23/39, para. 82(b)).

We also wish to refer to Human Rights Council resolution 22/6, which calls upon States to ensure that procedures governing the registration of civil society organizations are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration and are in conformity with international human rights law.