

**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 Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

REFERENCE:  
UA RUS 7/2017

29 September 2017

Excellency,

We have the honour to address you in our capacity 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 Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolutions 34/18, 34/5 and 32/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged administrative court proceedings against Ms. **Evdokia Romanova** for "promotion of non-traditional sexual relations to minors through social networks and Internet".

Ms. Evdokia Romanova is a human rights defender who works for Samara Social LGBT Movement ("AVERS"). She is also an active member of the Youth Coalition for Sexual and Reproductive Rights (YCSRR), and the Young Feminist Fund (FRIDA).

In this context, reference is made to the joint allegation letter (RUS 8/2012) regarding the introduction of the "propaganda of homosexuality" in the Code of the Russian Federation on Administrative Offences sent to your Excellency's Government on 12 December 2012 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the situation of human rights defenders.

According to the information received:

On 26 July 2017, Ms. Romanova was called to the police department in Samara, Central Russia, to submit a witness testimony. When she arrived there, she was however informed that she was under police investigation under Part II of article 6.21 of the Russian Code of Administrative Offences pertaining to the promotion of non-traditional sexual relations to minors through social networks and Internet. Persons found guilty of breaching this provision may be imposed a fine of a maximum 100,000 Russian rubles (approximately 1740 USD).

The case investigator asked Ms. Romanova to sign the case protocol. The latter rejected the charges and refused to testify against herself or to confess guilt, in line with her constitutional right (Article 51).

At the police department, Ms. Romanova was not provided any details on the nature of the accusations and was initially rejected to see the case materials describing the charges against her. Only after her lawyer negotiated by phone with the case investigator was Ms. Romanova allowed to read part of the case materials in question. The file was however taken away from Ms. Romanova by an unidentified person, who blamed the case investigator for allowing her to access this information. This person then questioned Ms. Romanova about unrelated matters pertaining to her personal life, which was perceived by her as a threat to her private and family life.

The casefile materials contained the pictures of publications she had reposted on her Facebook page and the Russian social network, VKontakte, including a Guardian article on the same-sex marriage referendum in Ireland and a BuzzFeed article on an exhibition in St. Petersburg dedicated to Russian LGBT youth. Four of the posts dated back to 2015 and another to May 2016. According to the information received, the Facebook page of Ms. Romanova is closed to the general Facebook audience and her posts are only accessible to her Facebook “friends”.

Full access to the casefile materials was granted to Ms. Evdokia Romanova and her lawyer on 5 September, nearly 6 weeks after she was charged for “propaganda of nontraditional sexual relationships among minors by using social networks and Internet”, and only after the case had been referred to Kirov District Court in Samara.

From the case material, it appears that two experts – one on linguistics and another one on psychology – had been mandated by the police Centre for the Prevention of Extremism to analyze the publication related to the exhibition in St. Petersburg on Russian LGBT youths, that had initially been posted by YCSRR as part of its campaign calling for youth activists to promote LGBT rights. Both concluded that the publication contained “propaganda of non-traditional sexual relations”. The expert who conducted the linguistic examination concluded that the publication was aimed at “forming non-traditional sexual orientation”, “creating appealing image of non-traditional sexual orientation” and “was forming an image of equal value of traditional and non-traditional sexual relations for society.”

The case of Ms. Romanova was scheduled to be heard by Kirov District Court on 18 September 2017 but the Court claimed the matter falls outside its jurisdiction and referred the case to the magistrate court.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern over the alleged administrative court proceedings against Ms. Romanova for “promotion of non-traditional sexual relations to minors through social networks and Internet” which appears to be used to prohibit and sanction the dissemination of information regarding LGBT persons and their human rights and to restrict the activities of individuals working to defend the rights of LGBT people. Moreover, we are very concerned at the fact that the current legal framework severely restricts the legitimate work of human rights defenders, in particular those working for the rights of LGBT people, and contributes to a hostile environment for them, in which they are prone to be victims of acts of intimidation, as the one reported in this communication.

These allegations appear to be in contravention of the rights of every individual to non-discrimination, privacy, liberty and security, freedom of expression and freedom of association, as laid down, inter alia, in articles 1, 2, 3, 12, 19, and 20 of the Universal Declaration of Human Rights (UDHR) and articles 2, 9, 12, 17, 19, 22 and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which the State is party since 16 October 1973. These rights are of universal nature and apply to everyone, irrespective of their sexual orientation or gender identity.

We would like to refer your Excellency’s Government to article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

In a joint statement on free expression and association, UN and regional human rights experts stated that they “categorically reject arguments that such restrictions to the rights of LGBTI people are necessary to protect public morals, health or the well-being of vulnerable people.”<sup>1</sup>

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<sup>1</sup> Joint statement by UN Special Rapporteurs on freedom of opinion and expression, freedom of peaceful assembly and of association, right to health, and human rights defenders African Commission on Human and Peoples’ Rights, Special Rapporteur on Human Rights Defenders in Africa, Inter-American Commission on Human Rights and OSCE Representative on Freedom of the Media, “*Free expression and association key to eliminating Homophobia and Transphobia*” (May 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14602&LangID=E>

We would also like to refer your Excellency's Government 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, in particular articles 1, 2, 5, 6 and 12. In this connection, we would similarly like to refer to the Human Rights Council resolution 31/32, which in paragraph 10 underlines the legitimate role of human rights defenders in mediation efforts and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

Sexual orientation and gender identity are prohibited grounds of discrimination under international law. In 2016, the Committee on economic, social and cultural established that "other status", such and how it is collected in article 2(2) of the ICESCR, included sexual orientation (E/C.12/GC/20, paragraph 32). The Human Rights Committee also found that States have a legal obligation to ensure to everyone the rights recognized by the Covenant without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, paragraph 3, and *Irina Fedotova v. Russian Federation* (CCPR/C/106/D/1932/2010), among others). In 2015, the Committee expressed concern that the laws banning "promotion of non-traditional sexual relations to minors" exacerbate the negative stereotypes against LGBT individuals and represent a disproportionate restriction of their rights under the Covenant and recommended their repeal (CCPR/C/RUS/CO/7, para. 10).

On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, the United Nations High Commissioner for Human Rights has recommended that States revise criminal laws to remove offences relating to consensual same-sex conduct and other offences used to arrest and punish persons on the basis of their sexual orientation and gender identity or expression and repeal so-called "anti-propaganda" and other laws that impose discriminatory restrictions on freedom of expression, association and assembly (A/HRC/29/23, para. 79).

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Ms. Evdokia Romanova in compliance with international instruments.

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 any comment you may have on the above-mentioned allegations.
2. Please indicate how the charges under Article 6.21, part 2 of the Russian Code of Administrative Offences for “propaganda of nontraditional sexual relationships among minors” are in compliance with the obligations of the Russian Federation under international human rights law, including the provisions contained in articles 19 and 26 of the International Covenant on Civil and Political Rights; as well as the decision of the Human Rights Committee in the case of Irina Fedotova v. Russian Federation (CCPR/C/106/D/1932/2010).
3. Please explain what safeguards are being taken to protect people against arbitrary interference with their right to privacy and against undue interference in the exercise of their right to freedom of opinion and expression.
4. Please indicate what measures have been taken or are envisaged to amend the Russian Code of Administrative Offences to bring it in line with international and regional human rights standards.
5. Please indicate what measures are being taken to ensure that human rights defenders, particularly those working for the human rights of LGBT people, are able to carry out their legitimate work without fear of threats or acts of intimidation and harassment of any sort.
6. Please provide information on the measures taken to implement the recommendations related to sexual orientation and gender identity made by the international human rights mechanisms.

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 responsible of 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.

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and expression

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