

Mandates of the Special Rapporteur on the rights of persons with disabilities; 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 Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
AL RUS 9/2018

9 May 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 35/6, 34/18, 33/9 and 32/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the removal of two foster children from the home of Ms. Yulia Savinovskih.**

According to the information received:

On 19 June 2014, Ms. Savinovskih and her husband Mr. Eugene Sokov entered into a foster family contract with the Welfare Administration of the Ordzhonikidzevsky District of Yekaterinburg ("the Welfare Administration"), in which Ms. Savinovskih and Mr. Sokov agreed to take two boys into their home as foster children.

Both of the boys are now five years old. One of them has cerebral palsy, and the other has a positive HIV status. Both children exhibited substantial health and social progress during their stay with Ms. Savinovskih and her family. At no point prior to August 2017 were any concerns raised about the care that the two children were receiving in the home of Ms. Savinovskih and Mr. Sokov. During the summer of 2017 Ms. Savinovskih and Mr. Sokov were in the process of collecting the documents that were necessary to initiate proceedings to adopt both boys, and had scheduled a meeting with the Welfare Administration for September 2017 to present the documents.

On 21 July 2017, for health reasons and under the advice of her doctors, Ms. Savinovskih underwent a double mastectomy. In considering life after her surgery, Ms. Savinovskih also, on 24 July 2017, published a post on Instagram imagining life as a transgender man.

On 27 August 2017, the Welfare Administration conducted a surprise inspection of Ms. Savinovskih's home, and on 28 August 2017 they terminated the foster family contract and removed the two children. The children were placed in a municipal institution for children without families, and have since remained there.

On 1 September 2017, Ms. Savinovskih submitted an administrative claim to the Ordzhonikidzevsky District Court of Yekaterinburg challenging the decision to terminate the foster contract. The District Court dismissed this claim on 20 September 2017, finding that Ms. Savinovskih hid the fact that she had undergone "a surgery aimed at gender reassignment" and had "represented herself as a man" in an Instagram post and thus had "ignored" the requirements for foster parents' "personality and moral standards" under Russian family law, thereby justifying the removal of the children.

This decision was revoked on procedural grounds on 6 December 2017. However, on 5 February 2018, the District Court again reviewed the case and again ruled against Ms. Savinovskih. In the ruling, the Court identified Ms. Savinovskih as having a "mental disorder" of "transsexualism" and stated that this constituted a sufficient reason to terminate the foster family contract, even though "transsexualism" is not included into the list of diseases preventing adoption. In addition, the Court noted that Ms. Savinovskih would de facto enter into a same-sex marriage with Mr. Sokov, contradicting the Russian Family Code. It ruled that "her intention to take a social role belonging to a male sex/gender" contradicts Russian family law principles and Russian "society's traditions and mentality."

Ms. Savinovskih has repeatedly asserted that she self-identifies as a woman and as the mother of her foster sons, and that she underwent the surgery for reasons of health alone.

An appeal in the case is scheduled for 15 May 2018.

We wish to express our grave concern that Ms. Savinovskih, Mr. Sokov and their children have been separated as a result of prejudices and discrimination based on Ms. Savinovskih's perceived gender identity linked with the categorisation of "transsexualism" as a mental disorder and stereotyped roles for men and women and in reaction to Ms. Savinovskih's autonomous health decisions and legitimate personal expression.

We are further concerned that this has resulted in the removal of the two children, one with a disability and the other with significant health needs, from a loving family and their placement in institutionalized care.

In connection with the information and concerns mentioned above, please refer to the attached **Annex which cites international human rights instruments and standards** relevant to these issues.

As it is our responsibility, under the mandate entrusted 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 or comment you may have on the above-mentioned information.
2. Please provide details regarding the legal grounds for removing the children from the care of Ms. Savinovskih and Mr. Sokov, in light of the Russian Federation's international human rights obligations.
3. Please explain any measures that were taken to ensure Ms. Savinovskih and Mr. Sokov's due process rights to challenge the termination of the foster family contract in a procedure free of bias and discrimination.
4. Please explain any efforts made to ensure that the decision to remove the children from the care of Ms. Savinovskih and Mr. Sokov had as a primary consideration the best interests of the children, and that the children were, commensurate with their age and maturity, given the opportunity to be heard in administrative and judicial proceedings relevant to this case, and that their views were accorded due weight.
5. Please provide details regarding the care and condition of Ms. Savinovskih and Mr. Sokov's foster sons in the institution where they are currently housed, including the capacity of the institution to provide for their particular health and developmental needs and any efforts to ensure that they receive particularized mental health care services related to their removal from the family home.
6. Please explain the efforts of the Russian Federation to ensure that women are provided with health interventions that are responsive to their physical and emotional needs, including their reproductive health and autonomy, without discrimination, judgment and bias, and that they are not denied necessary health services as a result of discrimination, bias or stigmatization.

We would appreciate receiving a response as soon as possible, given the upcoming appeal in this case.

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.

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities

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

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Alda Facio
Chair-Rapporteur of the Working Group on the issue of discrimination against women in
law and in practice

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.

With regard to the assertion by the Court that the removal of the children from Ms. Savinovskih's care was justified by "her intention to take a social role belonging to a male sex/gender," we would like to recall Your Excellency's Government's attention to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention), ratified by the Russian Federation on 23 January 1981. Article 5(a) of the CEDAW Convention requires States Parties to take all appropriate measures to modify social and cultural patterns of conduct with a view to eliminating prejudices and all practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women. The Committee on the Elimination of Discrimination against women (CEDAW Committee), has made it clear that this provision requires the elimination of social and cultural barriers that prevent women from exercising and claiming their rights and impede their access to effective remedies (General Recommendation No. 33, para. 7). Further, Article 16 of the CEDAW Convention requires States to eliminate discrimination against women in all matters relating to marriage and family relations, and in particular to ensure that men and women have the same rights and responsibilities as parents and with regard to guardianship, wardship, trusteeship and adoption of children, with the interests of the children being paramount in all cases.

The Working Group on the issue of discrimination against women in law and in practice has repeatedly emphasized that stereotypes and cultural constructions of gender cannot be allowed to interfere with women's human rights. In its report on discrimination against women in relation to family and culture (A/HRC/29/40), the Working Group condemned the discrimination, violence and criminalization suffered by women who do not conform to or who contest predominant gender stereotypes (para. 21), and emphasized that there are many and diverse forms of family that should be recognized by the State, including families involving members who may not conform to traditional concepts of gender expression (paras. 23-25). In its report on discrimination against women with regard to health and safety (A/HRC/32/44), the Working Group condemned as antithetical to human dignity the instrumentalization of women's bodies, defined as the subjection of women's natural biological functions to a politicized patriarchal agenda which aims at maintaining and perpetrating certain ideas of femininity versus masculinity (para. 12). With specific regard to the Court's identification of Ms. Savinovskih as having the "mental disorder" of "transsexualism," the report notes that pathologization of women's behaviour, including in psychiatric diagnoses, has functioned as a form of social control that interferes with women's enjoyment of human rights and equality (para. 73). Similarly, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health recently stated that the pathologization of transgender persons reduces their identities to diseases, which compounds stigma and discrimination (A/HRC/35/21, para. 48).

We would also like to draw your Excellency's Government's attention to Article 23 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 March 1973 and Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Russian Federation on 16 October 1973. Both of these Articles enshrine the right to protection of the family. Under Article 2(a) of the ICCPR and Article 2(b) of the ICESCR, States must ensure this right to all individuals equally and without discrimination. Both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have elaborated that sexual orientation and gender identity are included among the grounds of discrimination that are prohibited by Article 2 of their respective covenants (See, for example, CCPR/C/89/D/1361/2005: X v. Colombia. (2007); CCPR/C/78/D/941/2000: Young v. Australia (2003); CCPR/C/50/D/488/1992: Toonen v. Australia (1994); E/C.12/GC/20. (2009), Paragraph 32 & footnote 25; CESCR General Comment No. 22, para.23).

With regard to the use of Ms. Savinovskih's social media posts as evidence for the removal of her foster children, we would like to draw the attention of your Excellency's Government to Article 19 of the ICCPR, which guarantees the right to freedom of opinion and expression. Any limitation to the right to freedom of expression must meet the criteria established by article 19(3) of the ICCPR. Under this standard, limitations must be determined by law and must conform to the strict test of necessity and proportionality and must be applied only for those purposes listed in the provision. As highlighted by the Human Rights Committee in General Comment 34, for a restriction to comply with the provided-by-law requirement under article 19(3), the law itself must comply with the provisions, aims and objectives of the Covenant, and laws must not violate the non-discrimination provisions of the Covenant (CCPR/C/GC/34). With respect to legislation that explicitly attacks or restricts expression based on perceived or real sexual orientation or gender identity, we would like to highlight that such legislation does not comply with permissible restrictions to the right to freedom of expression under article 19(3). As highlighted by the Human Rights Council, the same rights that people have offline must also be protected online (A/HRC/32/13).

With regard to the use of Ms. Savinovskih's decision, on medical grounds, to undergo a double mastectomy as evidence for the removal of her children, we would like to recall that Article 12 of the ICESCR guarantees to everyone the right to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 14 on the right to the highest attainable standard of health, has specified that this right includes the right to control one's health and body, including sexual and reproductive freedom (para. 8), that the realization of women's right to health requires the removal of all barriers interfering with access to health services" (para. 21), and that States are obligated to support people in making informed choices about their health (para. 37). In its General Comment No. 12 on the right to sexual and reproductive health, the Committee elaborated that State interference with an individual's freedom to control his or her own body and ability to

make free, informed and responsible decisions in this regard constitutes a violation of Article 12 (para. 56).

A former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has noted in a report to the General Assembly that social norms based on stereotypes regarding women's roles and the belief that a woman's freedom, especially with regard to her sexual identity, should be curtailed and regulated, often result in punishment of women in a manner that constitutes a violation of the right to health (A/66/254, para. 16), and that public morality cannot serve as a justification for enactment or enforcement of laws that may result in human rights violations, including those intended to regulate sexual and reproductive conduct and decision-making (Ibid., para 18). Similarly, the Working Group on the issue of discrimination against women in law and in practice has emphasized that women have a right to autonomous access to health care, which means ensuring the right to make decisions concerning health, fertility and sexuality free of coercion and violence (A/HRC/32/44, para. 86).

With regard to the removal of Ms. Savinovskih's foster children from her home and their placement in an institution, we would like to draw Your Excellency's Government's attention to the Convention on the Rights of the Child (CRC), ratified by the Russian Federation on 16 August 1990. Article 3 of the CRC requires that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 8 provides for the right to preserve family relations, article 9 provides that child shall not be separated from his or her parents against their will, unless such separation is necessary for the best interests of the child, article 12 provides for a child's right to be heard in any administrative or judicial proceedings affecting the child, and Article 20 elaborates the need for special protection and assistance when a child is deprived of his or her family environment. Further, Article 23 specifically addresses the needs of children with disabilities, requiring that they enjoy conditions that ensure dignity, promote self-reliance, and facilitate the child's active participation in the community, and that they be provided with services in a manner conducive to achieving the fullest possible social integration and individual development.

The Committee on the Rights of the Child (CRC Committee) has elaborated further on these obligations in a number of general comments. General Comment No. 9, on children with disabilities, reemphasizes the importance of the best interests of the child, especially in institutional settings (para. 30). It also notes the importance of respecting the views of children with disabilities (para. 32), and states the Committee's concern that children with disabilities are not often heard in separation and placement processes (para. 48). It further emphasizes that children with disabilities are best cared for and nurtured within a family environment (para. 41) and that institutional care should be used only as a measure of last resort (para. 47). In its General Comment No. 12 on the child's right to be heard, the CRC Committee emphasizes that there is no age limit in Article 12 of the CRC (para. 21), and that this right applies to all relevant judicial proceedings affecting the child (para. 32). General Comment No. 14 on the best interests of the child recognizes the importance of preventing family separation and preserving

family unity in the child protection system, and asserts that separation should only occur when a child is in danger of experiencing imminent harm (p. 8).

We would also like to recall to your Excellency's Government's attention the Convention on the Rights of Persons with Disabilities (CRPD), ratified by the Russian Federation on 25 September 2012, which requires in Article 7 that children with disabilities enjoy all human rights and fundamental freedoms on an equal basis with other children, that the best interests of the child are a primary consideration all actions concerning children with disabilities, and that children with disabilities are able to express their views on all matters affecting them and that such views are given due weight. Article 19 of the CRPD specifies that persons with disabilities should have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others, and article 23 provides for the right to home and family, including ensuring that children with disabilities have equal rights with respect to family life and not be separated from their parents against their will where such separation is not necessary for the best interests of the child. In its General Comment 5 on living independently and being included in the community, the Committee on the Rights of Persons with Disabilities echoed the concerns of the CRC Committee regarding the high number of children with disabilities placed in institutions, and reiterated their call to support such children's ability to live in their family, extended family, or foster care (para. 12). Additionally, in its Resolution 32/23, the Human Rights Council has reaffirmed the importance of a safe and supportive family environment for all children, and especially for children with disabilities (paras. 3, 16). We would like to specifically recall that in its Concluding Observations on the Initial Report of the Russian Federation, the Committee on the Rights of Persons with Disabilities expressed its deep concern about the large numbers of boys and girls with disabilities living in institutions, and recommended that the State move towards deinstitutionalization and towards empowerment of families with children with disabilities (CRPD/C/RUS/CO/1, paras. 17-18).

In his report on the right to mental health (A/HRC/35/21), the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health stresses the devastating impact that institutionalization has on young children, particularly on their mental health and holistic development (para. 74). The placement of young children in institutional care and parental loss negatively affect brain development and the ability to form healthy relationships, all affecting the ability of children to fully realize their right to health as they transition into adulthood (para. 73).