

Mandates of the the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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 5/2019

17 July 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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 37/8, 34/18, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the criminal prosecution of woman environmental rights defender Ms. Alexandra Koroleva for non-compliance with the Foreign Agent Law.**

Ms. **Alexandra Koroleva** is an environmental rights defender and Director of Ekozaschita! (Ecodefense!). The organisation works in Moscow, Kaliningrad and Kuzbass to protect the right to a healthy environment, mitigate the negative impacts of coal mining and nuclear power plants, as well as to promote environmental education.

The adoption and application of the Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Functions of Foreign Agents, under whose provisions administrative fines have been issued against Ekozaschita!, was the subject of previous communications sent on 11 July 2012 (case no. RUS 5/2012); 13 June 2013 (case no. RUS 3/2013); 18 December 2013 (case no. RUS 13/2013); 20 June 2014 (case no. RUS 5/2014); 14 November 2014 (case no. RUS 9/2014); 7 August 2015 (case no. RUS 4/2015); 25 February 2016 (case no. RUS 2/2016); 14 April 2016 (case no. RUS 4/2016); and 11 August 2016 (case no. RUS 8/2016). We acknowledge the replies from your Excellency's Government dated 23 July 2012, 19 February 2014, 25 August 2014, 16 November 2015, 23 May 2016, 31 May 2016, and 14 October 2016, however we remain concerned given the allegations below.

According to the information received:

The Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial

Organizations Performing the Functions of Foreign Agents (hereafter “Foreign Agent Law”) entered into force on 20 November 2012. According to the amendments introduced by the Law, organisations which receive foreign funding or engage in activities deemed “political” ought to register on a “foreign agents” roster and fulfil a number of requirements, such as additional reporting and obligatory references to the “foreign agent” status in any public documents. To date, the Ministry of Justice has registered hundreds of organisations as “foreign agents”.

In 2012, Ekozaschita! refused to comply with the provisions of the Foreign Agent Law and register as a “foreign agent”. In July 2014, following a successful campaign by the organisation against the construction of a nuclear power plant in the Kaliningrad Region, the Ministry of Justice placed it on the list of “foreign agents”. As members of Ekozaschita! did not recognise this status, they refused to comply with the requirements attached to it.

To date, 28 fines have been issued against Ekozaschita! for the violation of the Foreign Agent Law, exceeding two million Rubles in total. In November 2018, the organisation’s bank accounts were frozen by the authorities.

On 30 May 2019, the Russian Federal Court Bailiff Service opened five criminal cases against Ms. Koroleva, as Director of Ekozaschita!. The human rights defender has been charged with “malicious non-execution by the head of organisation of a court sentence” under section 2 of Article 315 of the Russian Criminal Code. Three of the cases opened against Ms. Koroleva are related to the unpaid administrative fines issued against Ekozaschita! for its “failure to provide information of an NGO performing the functions of a foreign agent”. The other two cases are linked to the administrative fines issued for the organisation’s failure to report to the Ministry of Justice as required by the Foreign Agent Law.

According to the Russian Federal Court Bailiff Service, paying the fines forms part of Ms. Koroleva’s official duties as Director of Ekozaschita!. As of May 2019, the amount due for the unpaid administrative fines was 480,000 Rubles. If found guilty, Ms. Koroleva may face up to two years in prison.

Forty-nine Russian civil society organisations, including Ekozaschita!, currently have an application pending before the European Court of Human Rights (Application No. 9988/134), based on the claim that the Foreign Agent Law violates numerous human rights and that the “political activity” criteria within it is used arbitrarily by the state against non-governmental organisations.

Serious concern is expressed at the criminal charges brought against Ms. Koroleva in relation to her human rights work and for the exercise of her right to freedom of association. Further concern is expressed at the designation of the organisation Ekozaschita! as a “foreign agent” and at the administrative fines issued against it in connection with its failure to comply with the requirements of the Foreign Agent Law.

We also reiterate our concern about the negative consequences of the implementation of the Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Functions of Foreign Agents. In particular, we remain concerned about the highly detrimental impact of the Law on civil society, and its broader place within a crackdown on human rights defenders and civil society organisations, particularly those with dissenting opinions, exercising their rights to freedom of association and freedom of expression in the country.

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

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal and factual basis of the charges against Ms. Alexandra Koroleva, along with information on how these are compatible with international human rights law.
3. Please provide information on how the aforementioned implementation and interpretation of the provisions contained in the Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Functions of Foreign Agents are in line with the Russian Federation's obligations under international human rights law, in particular with article 22 of the ICCPR.
4. Please provide detailed information on the considerations and justifications involved in deeming the organisation Ekozaschita! as a "foreign agent", covered by the Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Functions of Foreign Agents
5. Please indicate the measures adopted to ensure that human rights defenders and organisations are able to carry out their legitimate work in the Russian Federation in a safe and enabling environment without fear of persecution, violence or harassment of any sort.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be

made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a
safe, clean, healthy and sustainable environment

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

Clement Nyaletsossi Voule
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 the above alleged facts and concerns, we would like to refer your Excellency's Government to articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Russian Federation on 16 October 1973, which guarantee the right to freedom of opinion and expression and the right to freedom of association respectively. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the aim pursued.

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 the following provisions of the UN Declaration on Human Rights Defenders:

- article 5(b), which provides for the right to form, join and participate in non-governmental organisations, associations or groups;
- article 13 (b) and (c) which stipulate that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the purpose of peacefully promoting and protecting human rights and fundamental freedoms.

In connection to article 13 of the Declaration, Human Rights Council Resolution 22/6 calls upon States to ensure that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy, and that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders other than those ordinarily laid down for any other activity unrelated to human rights to ensure transparency and accountability. No law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto. (A/HRC/RES/22/6, OPs 8 and 9)

We would like to recall that the Special Rapporteur on the situation of human rights defenders noted in his report to the Human Rights Council (A/64/226) that the only legal grounds upon which an interference with the freedom of association that is prescribed by law can be justified is if it meets the test as outlined by article 22, paragraph 2 of the ICCPR. This provisions requires the interference in question to be pursuant to 'legitimate aims', such as in the interests of national security or public safety; public order; the protection of public health or morals, or the protection of rights and freedoms of others. Without such a legitimate aim, interference is rendered contrary to international human

rights law, and in the context of the activities of NGOs, the Special Rapporteur has argued that “difficulties in the formation and registration of human rights associations; criminal sanctions for unregistered activities; government interference, supervision and monitoring of NGO activities; and difficulties in accessing funding may restrict the right to freedom of association and therefore must reach the very high threshold under article 22, paragraph 2, of the International Covenant on Civil and Political Rights in order to be admissible.” (A/64/226, para. 58.)

Furthermore, in the context of the Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Functions of Foreign Agents, we recall the report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/23/39), in which he called upon states to, inter alia, “recognize that undue restrictions to funding, including percentage limits, is a violation of the right to freedom of association” (para. 82 (c)) and that “regulatory measures which compel recipients of foreign funding to adopt negative labels constitute undue impediments on the right to seek, receive and use funding” (para. 82 (d)). He also urged states “to ensure that associations – registered and unregistered – 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.”(para. 82 (b)).

We would further like to bring your attention to principles 4, 5, 7, 8 and 9 of the Framework Principles on Human Rights and the Environment, which call on States to provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.

Finally, we would like to bring to the attention of your Excellency’s Government, the resolution adopted by the Human Rights Council A/HRC/RES/40/11 that recognises the important role and legitimate work of environmental human rights defenders and expresses grave concern for their situation around the world. The resolution strongly condemns the human rights violations and abuses against environmental human rights defenders, including women and indigenous human rights defenders. It urges all States to take all necessary measures to ensure the rights, protection and safety of environmental human rights defenders.