

Mandates of the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE:
AL RUS 9/2021

13 August 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/16 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged **harassment and criminal prosecution of human rights defender Mr. Semyon Simonov**, which appear to be related to his legitimate human rights activities.

Mr. **Semyon Simonov** is a human rights defender and the head of the Southern Human Rights Centre. The organisation works in the Krasnodar region to provide free legal assistance on human rights violations, raise awareness of human rights, conduct monitoring, and spread information on human rights violations.

The adoption and application of the Federal Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organisations Performing the Functions of Foreign Agents ("Foreign Agent Law"), in relation to which Mr. Semyon Simonov was prosecuted, was the subject of previous communications sent on 11 July 2012 (RUS 5/2012), 13 June 2013 (RUS 3/2013), 18 December 2013 (RUS 13/2013), 20 June 2014 (RUS 5/2014), 25 September 2014 (RUS 7/2014), 14 November 2014 (RUS 9/2014), 7 August 2015 (RUS 4/2015), 25 February 2016 (RUS 2/2016), 14 April 2016 (RUS 4/2016), 11 August 2016 (RUS 8/2016), 29 March 2017 (RUS 3/2017), and 17 July 2019 (RUS 5/2019). We acknowledge the replies from your Excellency's Government dated 23 July 2012, 19 February 2014, 25 August 2014, 24 November 2014, 17 December 2014, 16 November 2015, 23 May 2016, 31 May 2016, 14 October 2016, 5 June 2017, and 13 September 2019, however we remain concerned given the allegations below.

According to the information received:

The Foreign Agent Law requires Russian organisations, accepting any amount of foreign funding and carrying out vaguely defined political activity, to register on a "foreign agents" register and fulfil a number of requirements, such as additional reporting and obligatory references to the "foreign agent" status in any public documents.

In December 2016, the Ministry of Justice included the Southern Human Rights Centre to the "foreign agents" register. The organisation's "political activity" allegedly consisted of writing a report titled "Legal Status of Stateless People in the Greater Sochi Area" and participating in the nationwide human rights campaign "Citizen and Police".

After the Southern Human Rights Centre's inclusion in the register, Mr. Semyon Simonov stopped its activities. One year later, the Ministry of Justice removed it from the "foreign agent" register. However, despite the inactivity, the persecution of the Southern Human Rights Centre and Mr. Simonov connected with the organisation's "foreign agent" status allegedly continued.

According to the information received, on 14 February 2017, the Khostinsky District Court of Sochi fined the organisation 300,000 RUB for not registering as a "foreign agent" voluntarily, under Article 19.34 (1) of the Code of Administrative Offences ("violation of the procedure for the activities of a non-commercial organisation performing the functions of a foreign agent").

On 15 September 2017, the Khostinsky District Bailiff Department of Sochi allegedly initiated enforcement proceedings against the organisation to collect the fine.

Mr. Semyon Simonov allegedly submitted repeatedly documents showing that the organisation did not have funds or property to pay the fine. The authorities could not prove the opposite. However, Mr. Simonov was fined three times for the organisation's inability to pay – under Article 17.14 (1) ("violation of the law on enforcement proceedings") and Article 20.25 (1) ("evasion of an administrative penalty") of the Code of Administrative Offences – for a total of 40,000 RUB and paid the fines imposed on him.

On 18 October 2019, the investigator of the Central District Bailiff Department of Sochi reportedly initiated a criminal case against Mr. Semyon Simonov under Article 315 (2) of the Criminal Code ("failure to comply with a court verdict, court decision or other judicial act"). The case was based on the allegation that Mr. Simonov "took possession of the funds" and diverted them to pay the rent for the Southern Human Rights Centre instead of complying with the court decision of 14 February 2017 and paying the organisation's fine.

However, Mr. Semyon Simonov reportedly paid the rent to comply with the law. The Southern Human Rights Centre's registered office used to be at Mr. Simonov's home address. Mr. Simonov sold the flat, and as the head of the organisation, he was legally required to find another registered office. To comply with the law, in 2018, he rented a temporary office for the organisation and paid 20,000 RUB for it with his own money.

On 13 July 2020, the investigator allegedly imposed a travel ban on Mr. Simonov. On 12 July 2021, a magistrate judge in Sochi's Central District sentenced him to 250 hours of community service.

Mr. Simonov's lawyer had pointed out numerous irregularities in the criminal case and alleged falsification of case materials. Still, the case was not dismissed. Throughout the court proceedings, observers were not allowed into the courtroom on the pretext of COVID-19 restrictions. In addition, the judge reportedly denied requests by human rights organisations to arrange photo and video recording or broadcasting of the trial.

On a separate note, since at least 2013, police have reportedly detained and questioned Mr. Semyon Simonov numerous times under various pretexts. In January 2018, Mr. Simonov allegedly learned that he was on the Federal Security Service “Rubin” database of “persons under special monitoring”, allegedly due to his human rights work on behalf of workers involved in preparations for the 2014 Winter Olympics in Sochi.

Without wishing to prejudge the accuracy of the information received, we wish to express concern as to the alleged **harassment and criminal prosecution of human rights defender Mr. Semyon Simonov**, who appears to have been targeted for his legitimate human rights work and the exercise of his right to freedom of association.

A further concern is expressed at the alleged designation of the Southern Human Rights Centre as a “foreign agent” and the administrative fines imposed on the organisation and Mr. Semyon Simonov for failure to comply with the requirements of the Foreign Agent Law and for the inability to pay the organisation’s hefty fine.

We also reiterate our concern about the broader effect of the above allegations, as well as the negative consequences of the implementation of the Foreign Agent Law. In particular, we remain concerned about the highly detrimental impact of the Foreign Agent 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.

We are issuing this appeal in order to safeguard the rights of Mr. Simonov from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*.¹

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 be grateful for your observations on the following matters:

1. Please provide any additional information and comments you may have on the above-mentioned allegations.
2. Please provide information on the considerations and justifications involved in designating the Southern Human Rights Centre as a “foreign agent” under the Foreign Agent Law, along with information on how this is compatible with the Russian Federation’s obligations under international human rights law.
3. Please provide information on the legal and factual basis of the criminal sentence against Mr. Semyon Simonov and administrative

¹ Article 41 ICJ Statute ‘Interim Protection’: Part III, Section D (Incidental Proceedings), Subsection 1.

finances imposed on him and the Southern Human Rights Centre, along with information on how these are compatible with the Russian Federation's obligations under international human rights law.

4. Please provide information on why Mr. Simonov's trial was closed to the public and why recording or broadcasting of the trial was not permitted, along with information on how this is compatible with the Russian Federation's obligations under international human rights law.
5. Please provide information on the considerations and justifications involved in imposing the travel ban on Mr. Semyon Simonov, along with information on how this is compatible with the Russian Federation's obligations under international human rights law.
6. Please provide information on the considerations and justifications involved in including Mr. Semyon Simonov in the database of "persons under special monitoring", along with information on how this is compatible with the Russian Federation's obligations under international human rights law.
7. Please provide information on how the implementation and interpretation of the provisions contained in the Foreign Agent Law are in line with the Russian Federation's obligations under international human rights law.
8. 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, harassment or reprisal 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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned

allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Annex

Reference to international human rights law

In connection with the above-alleged facts and concerns, we would like to remind your Excellency's Government of its obligations under the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973, in particular, articles 9, 19 and 22, which guarantee the right to liberty and security, the right to freedom of opinion and expression and the right to freedom of association. Furthermore, 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 legitimate aim pursued.

We would also like to refer your Excellency's Government to Article 12 of the ICCPR, which guarantees the right to liberty of movement. Any restrictions to this right must be provided by law, be necessary and proportionate to the legitimate aim pursued, and be consistent with the other rights recognised in the ICCPR.

In addition, we would like to remind your Excellency's Government of Article 14 of the ICCPR, which guarantees a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Moreover, we would also like to refer your Excellency's Government to Article 17 of the ICCPR, which provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Furthermore, we would 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 Recognised Human Rights and Fundamental Freedoms, adopted on 9 December 1998 (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 realisation 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.

Likewise, 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 for the purpose of promoting and protecting human rights and fundamental freedoms;
- Article 6 (a), which provides for the right to know, seek, obtain, receive, and hold information about all human rights and fundamental

freedoms;

- Article 6 (b) and (c), which provides for the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;
- Article 9 (1), which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights;
- Article 12 (2) and (3), which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure, or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms; and
- Article 13, which stipulates that everyone has the right, individually and in association with others, to solicit, receive and utilise resources for the purpose of peacefully promoting and protecting human rights and fundamental freedoms.

Both the General Assembly and the Human Rights Council repeatedly urged the States to create and maintain a safe and enabling environment in which human rights defenders can operate free from hindrance, reprisals, and insecurity (e.g., the General Assembly resolutions 74/146 (A/RES/74/146) and 70/161 (A/RES/70/161), and the Human Rights Council resolutions 22/6 (A/HRC/RES/22/6) and 13/13 (A/HRC/RES/13/13)).

The Human Rights Council, in its resolution 24/5, reminds States of their obligation to respect and fully protect the right of all individuals to associate freely, including human rights defenders, 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 (A/HRC/RES/24/5, Paragraph 2).

In resolution 22/6, the Human Rights Council 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 criminalise or

delegitimise activities in defence of human rights on account of the origin of funding thereto. (A/HRC/RES/22/6, Paragraph 9).

We would also like to recall the report of the Special Rapporteur on the situation of human rights defenders, in which the Special Rapporteur noted that the right to access funding is among the key rights articulated in the UN Declaration on Human Rights Defenders (A/73/215, Paragraph 18). It is instrumental to the defence of human rights, and its implementation is a prerequisite for the creation of a safe and enabling environment for human rights defenders in which they can carry out their work (Ibid., Paragraph 19). The Special Rapporteur also noted that this right protects the ability of defenders to raise funds internationally and underscores that even legitimate aims of the State cannot be used as pretexts to silence or reduce the activities of human rights defenders. The Russian Federation's discriminatory approach to "transparency" in respect of the disclosure of civil society funding was named as an example of bad practices in the report (Ibid., Paragraph 22).

Furthermore, we would like to recall the report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, in which he expressed serious concern that undue barriers to funding are put in place and expressed his belief that States have an obligation to facilitate, not restrict, access for associations to funding, including from foreign sources (A/HRC/23/39, Paragraph 79). He called upon 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 authorisation or other undue impediments, including from individuals; associations, foundations or other civil society organisations; foreign Governments and aid agencies; the private sector; the United Nations and other entities (Ibid., Paragraph 82 (b)). He also called upon States to recognise that undue restrictions to funding are a violation of the right to freedom of association (Ibid., Paragraph 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 (Ibid., Paragraph 82 (d)), and to adopt measures to protect individuals and associations against defamation, disparagement, undue audits and other attacks in relation to the funding they allegedly received (Ibid., Paragraph 82 (e)).

Finally, we would like to remind you of the recommendations accepted under the third UPR cycle of the Russian Federation to safeguard the freedom of association of all its people, as prescribed in the Constitution, including human rights defenders, and guarantee the effective exercise of freedom of assembly and association to allow human rights defenders to do their work (A/HRC/39/13/Add.1, Paragraph 19, Recommendations 147.163 and 147.180).