

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Ref.: AL RUS 7/2022
(Please use this reference in your reply)

12 May 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolutions 43/16, 43/4, 41/12 and 41/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged designation of Legal and Social Support Charitable Foundation "Sphere" as a "foreign agent non-governmental organisation" and the recent administrative and judicial decisions leading to its liquidation.**

Legal and Social Support Charitable Foundation "Sphere" ("Sphere") is a Russian non-governmental organisation (NGO) that has been defending the rights of LGBTI people in Russia, fighting against systemic homophobia, biphobia, and transphobia, and creating and coordinating human rights programmes and initiatives since 2011.

We previously wrote to your Excellency's Government regarding the adoption and application of the Federal Law No. 121-FZ dated 20 July 2012 with subsequent amendments ("Foreign Agent NGOs Law") 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), 17 July 2019 (RUS 5/2019), 13 August 2021 (RUS 9/2021), and 24 November 2021 (RUS 13/2021). 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, 13 September 2019, 12 October 2021, and 19 January 2022. However, we remain concerned given the allegations below.

According to the information received:

On 1 March 2016, the Ministry of Justice included Sphere on the state register of "foreign agent NGOs" for receiving foreign funding while engaging in political activity. The political activity in question reportedly related to Sphere's human rights work. The designation subjected Sphere to the requirements of the Foreign Agent NGOs Law, including additional reporting,

audits, and marking of its materials.

In October 2021, the Ministry of Justice carried out an impromptu audit of Sphere, reportedly based on a complaint from a person “concerned” that they defended the rights of LGBTI people. The Ministry of Justice allegedly requested a lengthy list of documents from the organization, gave two working days to provide them, and followed up with more requests. Although the organization reportedly tried to comply with the requests for documentation, re-directed most of its staff to this work instead of their core activities, and provided over 4,000 pages of documents, the administrative burden was too heavy to meet the requests from authorities.

On 4 February 2022, the Ministry of Justice filed a lawsuit for Sphere’s involuntary liquidation with the Kuibyshev District Court of St. Petersburg, referring to “multiple grave and mostly non-rectifiable violations of Russian law” discovered during the audit.

According to the lawsuit, Sphere had committed serious violations of the law on charitable organisations and did not try to rectify them. The alleged violations included: the failure to bring the articles of the association in line with the changed legal requirements; the absence of a board of trustees; the failure to carry out mandatory audits; the failure to provide information on a change of address; several reporting violations, and the failure to approve a transaction and provide full documents on contracts with two legal entities. Sphere reportedly explained to the Ministry of Justice why all these allegations were unfounded.

However, the main emphasis in the lawsuit was on Sphere’s defence of LGBTI people’s rights, which was considered contrary to the Russian Constitution and an impermissible aim of founding a charity. This led to the Ministry of Justice’s conclusion that “The very fact of carrying out activities that are incompatible with the purposes of the establishment of a non-profit organisation, especially a charity, and with the fundamental traditional family values enshrined in the Constitution of the Russian Federation, is a ground for liquidating the organisation as it is constituting a threat to the public order and the legality of the activities of all civil society institutions”.

On 9 February 2022, the Kuibyshev District Court of St. Petersburg left the lawsuit without action due to the lack of (1) specific legal grounds for liquidation; and (2) evidence that the Ministry of Justice had tried to resolve the matter before filing a lawsuit (e.g., requested Sphere to rectify violations). However, on 24 February 2022, the St. Petersburg City Court overturned the District Court’s decision at the Ministry of Justice’s appeal.

On 21 April 2022 the Kuibyshev District Court in St. Petersburg ordered that Sphere be liquidated and endorsed the arguments brought forth by the Ministry of Justice.

We express serious concern at the designation of Sphere as a “foreign agent NGO”, as well as at the liquidation proceedings brought against it, which appear to be in retaliation for the exercise of the right to freedom of expression and aimed at stopping the organisation from continuing its legitimate human rights work.

Furthermore, we are concerned about the chilling effect this may have on human rights defenders and civil society representatives in Russia defending the rights of LGBTI people.

We also reiterate our concern about the consistently negative effects of the implementation of the Foreign Agent NGOs Law. We remain concerned about its highly detrimental impact on civil society, within a broader 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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain the grounds on which Sphere was designated as a “foreign agent NGO”, particularly which of its activities were considered political, and how this is compatible with your Excellency’s Government’s international human rights obligations.
3. Please provide detailed information on the legal and factual bases for the liquidation proceedings initiated against Sphere and how they are compatible with your Excellency’s Government’s international human rights obligations.
4. Please indicate what measures have been taken to ensure that human rights defenders and civil society representatives defending the rights of LGBTI people in Russia can exercise their rights to freedom of expression and of association and carry out their legitimate work freely and in a safe and enabling environment without acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Past 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 if the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Irene Khan

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

Victor Madrigal-Borloz

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights standards.

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 the Russian Federation on 16 October 1973, which guarantee the right to freedom of opinion and expression and the right to freedom of association.

The right to freedom of expression includes the right to seek, receive, and impart information and ideas of all kinds. As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), such information and ideas include, *inter alia*, political discourse, commentary on one's own and on public affairs, and discussion of human rights (paragraph 11), and all forms of expression and means of their dissemination are protected (paragraph 12).

We would like to remind your Excellency's Government that any restrictions to the exercise of the right to freedom of opinion and expression and the right to freedom of association must be provided by law and be necessary and proportionate to the legitimate aim. As the Human Rights Committee observed in General Comment No. 27 (CCPR/C/21/Rev.1/Add.9), restrictive measures must "be appropriate to achieve their protective function" and "be the least intrusive instrument amongst those which might achieve the desired result" (paragraph 14), while "the principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law" (paragraph 15). Furthermore, as the Human Rights Committee emphasised in General Comment No. 34 (CCPR/C/GC/34), any restrictions to the freedom of expression "must not be overbroad" (paragraph 34), "may not put in jeopardy the right itself" (paragraph 21) and may never be invoked to justify the muzzling of any advocacy of human rights (paragraph 23).

We would also like to refer your Government to article 14 of the ICCPR, which enshrines that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal in the determination of their rights and obligations in a suit at law.

Article 26 of the ICCPR further states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

We would like to emphasise that human rights are universal and apply to everyone, irrespective of their sexual orientation or gender identity. The principles of equality and non-discrimination are part of the foundations of the rule of law and human rights. They are reaffirmed in article 2 (1) of the ICCPR. The Human Rights

Committee emphasised that States have a legal obligation to ensure everyone the rights recognised by the ICCPR without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, paragraph 3).

In the United Nations High Commissioner for Human Rights' report to the Human Rights Council (A/HRC/29/23), he reiterated that all human beings, irrespective of their sexual orientation and gender identity, are entitled to enjoy the protection of international human rights law with respect to the freedom of expression and association, as well as all other civil, political, economic, social, and cultural rights (paragraph 9) and States have well-established obligations to respect, protect, and fulfil the human rights of all persons within their jurisdiction, including LGBT and intersex persons (paragraph 10). He further noted that States should review and repeal discriminatory provisions in domestic legislation that have a disproportionate impact on the exercise of the rights to freedom of expression and association by LGBT persons and others advocating for their rights. States should refrain from directly interfering with these rights and protect LGBT persons exercising these rights from attacks and reprisals (paragraph 18).

Furthermore, we would like to refer 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, 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, individually and in association with others, 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;
- 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 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 express purpose of peacefully promoting and protecting human rights and fundamental freedoms.

We would like to recall the report of the Special Rapporteur on the situation of human rights defenders (A/73/215), 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 (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 (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 (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 (A/HRC/23/39), 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 (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 (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 (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 (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 (paragraph 82 (e)).

Finally, we would like to remind your Excellency's Government of the Human Rights Committee's Concluding observations on the seventh periodic report of the Russian Federation (CCPR/C/RUS/CO/7). The Committee concluded that the Russian Federation should:

- clearly and officially state that it does not tolerate any form of social stigmatisation of homosexuality, bisexuality or transsexuality, or hate speech, discrimination or violence against persons based on their

sexual orientation or gender identity. It should, *inter alia*, take all the steps necessary to strengthen the legal framework protecting LGBT individuals from discrimination, and guarantee the exercise in practice of the rights to freedom of expression and assembly of LGBT individuals and their supporters (paragraph 10); and

- repeal or revise the legislation requiring non-commercial organisations that receive foreign funding to register as “foreign agents” with a view to bringing it into line with its obligations under the ICCPR, and take into account the opinion of the European Commission for Democracy through Law in that regard. It should, at the very least: (a) drop the term “foreign agent” from the law; (b) clarify the broad definition of “political activities”; (c) remove the power granted under the law of registering non-commercial organisations without their consent; and (d) revisit the procedural requirements and sanctions applicable under the law to ensure their necessity and proportionality (paragraph 22).