

**Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; the Independent Expert on human rights and international solidarity and the Special Rapporteur on the right to privacy**

Ref.: AL OTH 123/2024  
(Please use this reference in your reply)

10 September 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; Independent Expert on human rights and international solidarity and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 52/13, 53/5 and 55/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the negative impact on human rights of sanctions imposed by the European Union on 3 June 2022 on Ms. Aleksandra Melnichenko.

According to the information received:

The EU Council imposed restrictive measures against Ms. Aleksandra Melnichenko on 3 June 2022. The measures were based on Council Decision 2014/145/CFSP and Council Regulation (EU) No 269/2014<sup>1</sup>, in which it was indicated that Ms. Melnichenko was accused of being an "associate" of her husband, Andrey Melnichenko, in his alleged ties with the Russian Government. It is reported that Ms. Melnichenko has never lived in Russia and does not hold Russian citizenship or any type of residence, nor has she been involved in any political activities or projects related to the politics of any country, including Russia and Ukraine, nor has she participated in any business dealings in Russia or in any kind of activity connected to Russia or the Russian Government.

The EU Council's reported justification for this action was Ms. Melnichenko's status as a beneficiary of a Trust linked to companies founded by her husband, Andrey Melnichenko. She is a discretionary beneficiary, meaning that she has no right of ownership or control over the assets, and she cannot derive any benefit from the assets without a trustee's decision. The trustees are independent persons subject to the laws of the EU, and they are the true and only owners of these companies.

It is reported that Ms. Melnichenko became a beneficiary by virtue of the trust deed signed by her husband without her involvement, and long before the start of the war in Ukraine and the subsequent sanctions. This trust deed nominated her as the automatic beneficiary should her husband resign from this position. Thus, when Mr. Melnichenko resigned on 8 March 2022, before the EU

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<sup>1</sup> Council Decision (CFSP) 2022/883 of 3 June 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty, and independence.

imposed sanctions on him, she became the beneficiary without any deliberate action from her, by virtue of the law and the terms of the trust.

Over the last two years, in parallel with her action for annulment before the General Court, Ms. Melnichenko has repeatedly submitted requests for reconsideration of her listing to the EU Council. However, the Council has reportedly ignored her requests without meaningful explanation.

The EU Council decided to maintain her on the sanctions lists in September 2022, in March and April 2023, in September 2023 and March 2024. The corresponding decisions and regulations are subject to the annulment proceedings currently pending before the General Court in cases T-498/22 and T-1113/23.

On 12 March 2024, the Council adopted the latest set of acts maintaining the restrictive measures in respect of Ms. Melnichenko. The current statement of reasons concerning her reads as follows: *“Aleksandra Melnichenko is the wife of a Russian industrialist who transferred his effective ownership and benefit of the major fertiliser producer [...] Group and the [...] company [...] to her on 9 March 2022. Aleksandra Melnichenko takes advantage of the fortune and benefits from the wealth of her husband. ...Therefore, she is an immediate family member benefitting from her husband Andrey Melnichenko and is linked to him by common financial interests.”*<sup>2</sup>

By letter of 13 March 2024, the Council informed her legal representatives of the Contested Acts, without addressing any of the comments and observations submitted by Ms. Melnichenko throughout the earlier exchanges with the Council.

It is reported that the Council's argument rests on her marriage to her husband, suggesting that she is suspected of evading sanctions or acting as a conduit for her husband's control over the two companies. However, the Council has not produced or presented any concrete evidence to substantiate these claims. The Council relies, in particular, on the fact that Ms. Melnichenko has become, since 8 March 2022, the beneficiary of the Trust, although it accepts that the trust is "managed by [...] Ltd, a company which represents the ultimate owner of [...] Group".

However, reportedly, Ms. Melnichenko became the beneficiary of the trust not because she was associated with her husband in a professional way, but because she was his wife. On the day her husband decided to retire as beneficiary, Ms. Melnichenko automatically became the beneficiary of the Trust by virtue of the provisions of the Declaration of Trust, which were formulated a decade ago and firmly established principles of trust law. It is reported that neither before 8 March 2022 nor thereafter was she involved in any business or decision-making process within her husband's fertilizer-producing company. She has no control over any corporate decision-making process, and for this reason, she cannot be a proxy for her husband, enabling him – through their marital status – to still control the company.

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<sup>2</sup> [Decision - 2022/883 - EN - EUR-Lex \(europa.eu\)](#) [EUR-Lex - 02014D0145-20240527 - EN - EUR-Lex \(europa.eu\)](#)

It is reported that Ms. Melnichenko has tried to engage with the Council in order to find an acceptable solution, for instance, by proposing to explore the possibility of relinquishing her role as a beneficiary in the Trust and reestablishing her position prior to 8 March 2022, if this would be legally possible. Reportedly, the Council did not reply, neither positively nor negatively, to this request. In the Court proceedings, it claimed that her listing is justified and must be maintained.

While we do not wish to prejudge the accuracy of the information received, we express serious concern about the unilateral sanctions and related restrictions imposed on Ms. Aleksandra Melnichenko, which may have a negative impact on her human rights and may be considered as a violation of international human rights law, in particular with regards to the relevant provisions of the International Covenant on Civil and Political Rights, such as articles 14, 15 and 17, on due process, fair trial guarantees, and the right of a person not be subjected to arbitrary or unlawful interference with her privacy, family, home or correspondence.

We wish to express our serious concern at the reported fact that Ms. Melnichenko's family ties may have been the main reason for enforcing restrictive measures against her without producing and presenting evidence of any wrongdoing or criminal act from her side. We are also seriously concerned about the inability of Ms. Melnichenko to receive a clear response from the EU Council, or any feedback on her appeal for reconsideration of her case. Family ties do not constitute the grounds for any type of responsibility and can be qualified as a collective punishment prohibited by international human rights law. The European Court of Justice (ECJ) also recognized that existence of family links on its own is not sufficient ground for listing<sup>3</sup>.

Impediments in the review of imposed unilateral sanctions may contravene not only the above-mentioned international law provisions, but also the EU Council's guidelines on the implementation and evaluation of restrictive measures in the framework of the European Union Common Foreign and Security Policy, Doc. 11205/12, para. 7, which provides for their restrictive measures' constant review to ensure that they continue to contribute towards achieving their stated objectives (A/HRC/39/54/Add 1, para. 8). In addition, listed persons and entities may challenge the Council's decision before the General Court of the European Union, in accordance with the conditions laid down in the second paragraph of article 275 and the fourth and sixth paragraphs of article 263 of the Treaty on the Functioning of the European Union, which did not seem to be the case in Ms. Melnichenko's situation by the alleged lack of response over Case T-1113/23. Moreover, the ECJ does not review the grounds for designation, and recognizes the broad discretion of the European Council to decide on imposition of restrictive measures as a part of the EU foreign policy.

The Council of the European Union guidelines on implementation and evaluation of restrictive measures in the framework of the European Union Common Foreign and Security Policy, Doc. 11205/12, para. 9, further states that *“the introduction and implementation of restrictive measures must always be in accordance with international law. They must respect human rights and fundamental freedoms, in particular due process and the right to an effective remedy. The measures imposed must always be proportionate to their objective.”*

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<sup>3</sup> Tomana, T-190/12, para. 235.

It thus follows that Ms. Melnichenko's reported inability to access remedies and to appeal for the review of the imposed restrictive measures, may be considered a violation of her human rights to due process and fair trial guarantees, while any prolongation of her designation and enforcement of sanctions-related restriction may violate a host of other human rights.

We also wish to recall that in the enforcement of their unilateral sanctions and the determination of the targets of such measures, sanctioning parties should exercise the precautionary principle to ensure that they do not violate human rights. Taking into account that consequences of designation are rather serious and are compatible to those of criminal penalties, Ms. Melnichenko is entitled to enjoy all guarantees of fair trial, access to justice and access to effective remedies as the mechanism for protection of her rights affected by unilateral sanctions. The above challenges constitute a clear violation of the right to privacy and family rights, and ultimately affect her reputation.

In the thematic and country-specific work of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights' she has regularly raised concerns about the adverse effects of unilateral sanctions and their means of enforcement on the access to justice by any target of such measures (states, legal entities, or physical persons). She has particularly highlighted challenges in legal representation and defense, access to information and evidence on which sanctions designations have been decided, inconsistencies in or complete lack of review process for such designations, absence of clear legal framework based on which such measures are decided and enforced, and the overall impediments to access an effective remedy.

She has also mentioned cases of erroneous designations by the European Union, whose evidence of the alleged wrongdoings later found by the EU courts (e.g. the General Court) to be faulty or insufficient.<sup>4</sup>

We are also concerned that the mere fact of deprivation of designated individuals from the access to effective judicial protection and effective remedy constitutes discrimination on the ground of nationality of as in this case any other type of association with the country under sanctions, as well as a violation of the right of the equal protection by law.

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.

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<sup>4</sup> See for example A/HRC/48/59 paras 93 and 109; A/76/174/Rev.1 paras 19, 22, 23, 34

2. Please explain how the designation of individuals in a sanctions list, along with its consequent negative consequences as a part of the EU foreign policy for activity, which does not constitute a crime, without any court decision and in the absence of the due process guarantees, corresponds the standard of the presumption of innocence, coalified as a peremptory norm of international law.
3. Please explain the legal and factual grounds for the designation of restrictive measures and the inclusion of Ms. Aleksandra Melnichenko in the Council Decision 2014/145/CFSP. Please also address how these grounds and reasons are in line with international law, including international human rights law.
4. Please provide information on the procedure of designation of Ms. Melnichenko and whether due process and fair trial guarantees have been taken into consideration in this process.
5. Please provide argumentation as to how the designation of Ms. Melnichenko for family ties with her husband can be viewed as corresponding to the standards of the presumption of innocence and prohibition of collective punishment.
6. Please also explain the possibility of an effective appeal and effective remedy in accordance with standards of fair trial, due process, prohibition of collective punishment, prohibition to be punished for the activity which did not constitute a crime at the moment when they took place.
7. Please provide information on any response, if available, by competent EU authorities, including the EU Council, to Ms. Melnichenko's appeal for reconsideration of her case and ultimate delisting. Please provide relevant details about the content and main arguments of such a response. If a response was not provided or not substantiated by evidence about Ms. Melnichenko's alleged wrongdoing or criminal act, please explain the reasons why.

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 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.

Alena Douhan  
Special Rapporteur on the negative impact of unilateral coercive measures on the  
enjoyment of human rights

Cecilia M. Bailliet  
Independent Expert on human rights and international solidarity

Ana Brian Nougrères  
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## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, I would like to refer to the relevant international norms and standards that are applicable to the issues brought forth by the situation described.

With regards to due process and fair trial guarantees we wish to refer to article 14 of the ICCPR. This article addresses the procedures that constitute due process. In particular, article 14(2) establishes that all persons charged with crimes are to be presumed innocent until their guilt is established through legal procedures. As for determining whether a crime has been committed, article 14(1) holds that everyone charged with a crime “shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law,” during which the accused person has the right to defend himself (art. 14(3)(d)). This allows the presumption that if no charge is brought, or if a charge that had been brought is dismissed, the act in question does not rise to the level of a crime for which a fair hearing shall be held.

We further note that article 15(1) of the ICCPR states that “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.”

We additionally refer also to ICCPR article 17, which is relevant insofar as it prohibits “arbitrary or unlawful interference with [a person’s] privacy, family, home or correspondence” as well as “unlawful attacks on his honour and reputation.”

Article 26 of the ICCPR explicitly refers to equality of all persons before the law and sets forth their entitlement “without any discrimination to the equal protection of the law”.

According to the general recommendation No. 33 of the CEDAW, access to justice encompasses “justiciability, availability, accessibility, good quality and accountability of justice systems, and provision of remedies for victims”.

General comment No. 32 includes as its integral part access to legal assistance, access to the documents, evidence and other relevant materials; access to the “duly reasoned written judgement of the trial court”; access to the tribunal at the appeal level.

Guidance on the Access to justice for women additionally refers to: non-discrimination; widespread legal awareness and literacy among the population; affordable and quality legal advice and representation; accessible, affordable, timely, effective, efficient, impartial, corruption-free and trustworthy dispute settlement mechanisms; respect to the human rights standards; availability of efficient and impartial mechanisms for the enforcement of judicial decisions (Framework for measuring access to justice including specific challenges facing women, Guidance note, 2016).

Access to justice as the means to protect all other human rights shall be ensured by states even if such rights are violated extraterritorially (Adjudicating Economic, Social and Cultural Rights at National Level, Practitioners Guide No. 8; Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, principles 8–9).