

Mandates of 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 8/2016:

11 August 2016

Excellency,

We have the honour to address you in our capacities as 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 25/2, 32/32, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning criminal persecution of a women human rights defender, **Ms. Valentina Cherevatenko, for "malicious evasion of duties" under the Foreign Agent Law.**

Ms. Valentina Cherevatenko is the founder and chairperson of the **Women of the Don Union** and chair of the board of the **Women of the Don Foundation for Civil Society Development** (hereafter "Women of the Don Foundation"). The Women of the Don Union and Foundation work on peace-building, social and legal matters in the North Caucasus, Russian Federation. The Women of the Don Foundation also works on children and women rights in the region, in particular on the issues of violence against women and gender discrimination.

The adoption and application of the Law on Introducing Amendments to Legislative Acts of the Russian Federation in Part Regulating Activities of Non-commercial Organizations, which Carry Functions of Foreign Agents, was the subject of previous communications sent on 11 July 2012, see A/HRC/22/67 (case no. RUS 5/2012); 13 June 2013, see A/HRC/25/74 (case no. RUS 3/2013); 18 December 2013, see A/HRC/16/21 (case no. RUS 13/2013); 20 June 2014, see A/HRC/28/85 (case no. RUS 5/2014); 14 November 2014, see A/HRC/28/85 (case no. RUS 9/2014); 7 August 2015, see A/HRC/31/79 (case no. RUS 4/2015); 25 February 2016 (case no. RUS 2/2016); and 14 April 2016, (case no. RUS 4/2016). We acknowledge the replies from your Excellency's Government dated 23 July 2012, 19 February 2014, 16 November 2015, 23 May 2016 and 31 May 2016. However, we remain concerned given the new allegations below relating to possible criminal sanctions imposed on Ms. Cherevatenko.

According to the information received:

In June 2014, the Women of the Don Union was listed as a foreign agent under Federal Law №121-FZ on Introducing Amendments to Legislative Acts of the Russian Federation in Part Regulating Activities of Non-commercial Organizations, which Carry Functions of Foreign Agents, commonly known as the 'Foreign Agent Law', enacted in 2012. A year later, in October 2015, the Women of the Don Foundation was also listed as a foreign agent. Both organisations refused to accept this classification and challenged their respective designation in civil and administrative proceedings.

On 29 February 2016, the Ministry of Justice removed the Women of the Don Union from the list of "foreign agents" on the grounds that the organization was no longer carrying out the "functions" of a "foreign agent". While the appeal of the Women of the Don Foundation is still pending, the organization has reportedly complied with all obligations imposed by the law, including by filing the required reports and auditing statements with the government, informing the public of their new designation, and paying all administrative fines.

On 6 May and 10 May 2016, Ms. Cherevatenko was nevertheless summoned for questioning at the 7th Investigation Department of the Russian Investigative Committee in Rostov-on-Don as part of a preliminary investigation under Article 330.1 of the Russian Criminal Code, which provides for criminal liability punishable by up to two years of imprisonment for "malicious evasion of the duty to file the documents required for inclusion in the register of non-profit organisations performing the functions of a foreign agent".

On 22 June 2016, Ms. Cherevatenko was officially charged on the basis of failing to file an application to register the Women of the Don Foundation as a "foreign agent". According to the Foreign Agent Law, any non-governmental organization that receives external sources of funding must register as a "foreign agent", if it engages in a "political activity", which appears to include human rights activities within its remit.

On 24 June 2016, the office of the Women of the Don Union and Foundation in Novocherkassk, Rostov region was allegedly raided by the Federal Security Service and police officers upon presentation of a court order. Computers, accounting records and files were all seized.

On 27 June 2016, Ms. Cherevatenko received a copy of the decision to open a criminal case against her for the "malicious evasion of duties" under the Foreign Agent Law. This is reportedly the first case of a criminal prosecution brought against a human rights defender under Article 330.1 of the Criminal Code for non-compliance with the Foreign Agent Law. Ms. Cherevatenko tried to appeal the decision under Article 125 of the Russian Criminal Code, but the appeal was rejected.

It is reported that in July 2016 the Presidential Council for Civil Society and Human Rights¹ prepared an expert opinion on Ms. Cherevatenko's case, concluding that the Article 330.1 does not meet requirements of legal certainty. In its opinion, the Council stated that prosecuting Ms. Cherevatenko for criminal liability under this Article would, *inter alia*, be in violation of her rights under Article 6, paragraph 3(a) of the European Convention on Human Rights and contrary to the clear jurisprudence of the European Court of Human Rights.

On 21 July 2016, representatives of the Presidential Council for Civil Society and Human Rights visited the Rostov region, including the office of the Women of the Don. At the same time outside their office, a picket was organized by the National Liberation Movement, members of which were also giving interviews to the Russian media outlets. During the picket, the members of the Women of the Don Union and Foundation were publicly labelled as "traitors acting on the orders of their sponsors", and members of the media were reportedly prompting the interviewees to state that the two organizations and other human rights defenders like them are preparing a coup d'état in the Russian Federation.

On 22 July 2016, members of the Women of the Don Union and Foundation met in a café in Rostov, when they were accosted and assaulted by the same group of individuals who were picketing a day earlier outside their offices. The women human rights defenders became seriously concerned about their security given the increased level of hate against them.

Serious concern is expressed at the unprecedented criminal liability charges brought against Ms. Cherevatenko in relation to her human rights work and for the exercise of her right to freedom of association. Further concern is expressed that the registration requirements for associations and criminal liability for their non-compliance unduly restricts the right to freedom of expression. We are also concerned about growing criminalization of legitimate and peaceful human rights work in the Russian Federation and the chilling effect it may have on the broader exercise of the rights to freedom of expression and freedom of association.

Further concern is expressed at the alleged intimidation and delegitimization Ms. Cherevatenko and other women human rights defenders of the Women of the Don Union and Foundation have suffered as a result of the investigation, as well as designation of the two organizations as "foreign agents".

¹ The Presidential Council for Civil Society and Human Rights is a consultative body established to assist the President of the Russian Federation in the exercise of his constitutional responsibilities to guarantee and protect human rights and freedoms, keep the President informed on the situation in this area, facilitate development of civil society institutions in Russia, and draft proposals for the President on matters within its mandate.

We also reiterate our concern about the broader effect of the above allegations, as well as the negative consequences of the implementation of the Law on Introducing Amendments to Legislative Acts of the Russian Federation in Part Regulating Activities of Non-commercial Organizations which Carry Functions of Foreign Agents. In particular, the highly detrimental impact on civil society in what appears to be a crackdown on human rights defenders and organisations, particularly those with dissenting opinions, exercising their rights to freedom of association and freedom of expression in the country.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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.

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 detailed information on the considerations and justifications involved in deeming the Women of the Don Foundation a "Foreign Agent", covered by the Law on Introducing Amendments to Legislative Acts of the Russian Federation in Part Regulating Activities of Non-commercial Organizations which Carry Functions of Foreign Agents.
3. Please provide information concerning the legal grounds for the criminal prosecution of Ms. Cherevatenko, in particular how her actions amounts to "malicious evasion of duties". Please explain how these measures are compatible with international norms and standards, particularly relevant provisions enshrined in the International Covenant on Civil and Political Rights.
4. Please provide information about the justification for the court order presented to search the offices of the Women of the Don Union and Foundation, as well as the justification for confiscating computers, accounting records and files. Please provide information about whether any of these belongings have been returned.

5. Please provide detailed information about the justification for the decision to deny the appeal of Women of the Don Foundation.
6. Please provide information about measures taken to ensure the safety of members of the Women of the Don Union and Foundation.
7. Please provide information about measures taken to bring the Foreign Agent Law and Article 330.1 of the Criminal Code as well as their enforcement into line with international human rights standards.
8. Please indicate what measures have been taken to ensure that human rights defenders in the Russian Federation are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment or persecution of any sort.

We would appreciate receiving a response within 60 days.

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.

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

Maina Kiai
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 above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

The abovementioned allegations appear to be in contravention with Articles 14(3), 19, and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Russian Federation on 16 October 1973, which provide that in the case of criminal charges, everyone shall be entitled to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; everyone shall have the right to freedom of expression; and freedom of association with others.

We would also like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that “[r]eminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law”.

We also wish 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, articles 1 and 2 of the Declaration 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 such provisions of the Declaration as article 5 (b) reiterating the right to form, join and participate in non-governmental organizations, associations or groups); article 6 (b) and (c) stating the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights; and article 13(b) and (c) reiterating the right to solicit, receive, and utilize resources for the purpose of peacefully promoting and protecting human rights and fundamental freedom.

We also wish to refer to Human Rights Council resolution 22/6, which reiterates that domestic law should create a safe and enabling environment for the work of human rights defenders (PPs 10-13).

Furthermore, in the context of the Law on Introducing Amendments to Legislative Acts of the Russian Federation in Part Regulating Activities of Non-commercial Organizations, which Carry Functions of Foreign Agents, we would also like to recall the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, which calls on Member States to “ensure that associations... 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” (A/HRC/23/39, para. 82(b)).

Finally, we would like to remind you of the recommendations accepted under the second UPR cycle of the Russian Federation to promote and protect the a safe and enabling environment for civil society, including human rights defenders’ right to freedom of association in accordance with the Declaration on Human Rights Defenders, as well as to ensure laws governing NGOs are compliant with international human rights and do not create undue obstacles; including recommendations 140.156, 140.157, 140.159, 140.166, 140.167, 140.170, 140.173, 140.175 and 140.177 (see A/HRC/24/14/Add.1).